

EXHIBIT 1
TO KAPLAN DECLARATION

Gary Klein
August 29, 2017

Volume I
Pages 1-188

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:17-cv-10107-WGY

DAVID SETH WORMAN, et al.,
Plaintiffs,
vs.

CHARLES D. BAKER, et al.,
Defendants.

DEPOSITION OF GARY KLEIN
Tuesday, August 29, 2017 at 9:10 a.m.
Campbell, Campbell, Edwards & Conroy
One Constitution Center
Boston, Massachusetts 02129

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I N D E X

Testimony of: Direct

GARY KLEIN
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EXHIBITS SENT TO ATTORNEY SWEENEY

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1 year from the time I first started to discuss it.

2 Q. So precisely when did you join the Office
3 of the Attorney General?

4 A. September 2015.

5 Q. And what were your responsibilities when
6 you joined the office?

7 A. My responsibilities then and now are a
8 variety of special projects that are -- where the
9 Public Protection Advocacy Bureau has some
10 responsibilities.

11 Q. Do any of those projects involve
12 firearms?

13 A. Yes. A significant portion of my time is
14 taken up with projects involving firearms.

15 Q. Has that always been the case since you
16 joined the Bureau?

17 A. I wouldn't say from day one, but fairly
18 early on I was asked if I would take the Bureau's
19 lead on firearms issues.

20 Q. And approximately when was that?

21 A. I would say it was approximately October
22 2015, more or less.

23 Q. And in October 2015 what did you
24 understand you would be doing for the Bureau in

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1 connection with firearms issues?

2 A. When I was first asked to do it, my
3 understanding was that there was an ongoing review
4 of compliance by gun sellers with State law for the
5 most part and that I would have some role in being
6 what amounted to a team leader for that project.

7 Q. Who communicated to you that concern?

8 A. What concern do you mean?

9 Q. The concern you just mentioned.

10 A. Probably John Miller, but I think it was
11 something that became clear as I started to
12 understand what the Bureau was working on.

13 Q. And what was the scope of your project?
14 What were you tasked with doing?

15 A. At the very earliest stages it was what I
16 just said. It was to evaluate whether gun sellers
17 across Massachusetts in general were complying with
18 Massachusetts law.

19 Q. And did you have anyone assigned to work
20 with you in connection with that project?

21 A. At the very beginning?

22 Q. Yes.

23 A. It was a team in the office. The
24 reporting relationships in the context of this

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1 project have shifted over time.

2 Q. But who were you working with?

3 A. I was working with members of the Criminal
4 Bureau members of the Government Bureau, another
5 lawyer or two in the Public Protection and Advocacy
6 Bureau; one of whom's responsibility was to sort of
7 pass the baton for these projects. Probably a few
8 others; the state solicitor at the time who was
9 involved in some of these projects, and the Deputy
10 Attorney General.

11 Q. What were you told about why the Office of
12 the Attorney General was concerned about compliance
13 with firearms laws?

14 MR. PORTER: Objection. I think I
15 would need to instruct the witness not to answer.
16 Really any questions about specific communications
17 concerning potential law enforcement activity within
18 the Attorney General's Office, which this has been
19 identified as, those communications would be
20 protected as attorney work product. They would be
21 protected under the deliberative process privilege
22 and they would be protected under the privilege
23 investigative information.

24 We've indicated those objections

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1 prior to the deposition in writing, and I believe
2 this particular communication or any communications
3 asking for this kind of specific information would
4 be privileged and not appropriate for testimony, so
5 I'm going to instruct the witness not to answer.

6 BY MR. SWEENEY:

7 Q. I take it you'll follow your counsel's
8 instruction?

9 A. Yes.

10 Q. What did you understand the basis of the
11 concerns were at that time, October 2015?

12 A. Some combination of finding a way forward
13 for the Office on gun policy issues and trying to do
14 what the Office can do to address problems of gun
15 violence.

16 Q. Did you conduct any review or direct
17 review into the extent to which semi-automatic
18 rifles had been used in gun violence in the State of
19 Massachusetts?

20 A. I would say yes.

21 Q. And how did you go about that review?

22 A. Some combination of talking to other
23 people in the Office, research of various kinds; on
24 some occasions talking to people outside the Office

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1 in law enforcement or otherwise.

2 Q. Can you be more specific? That's pretty
3 vague.

4 MR. PORTER: I just need to note the
5 same concern, which is, again, it's what we
6 indicated in our objections, written objections,
7 which is at a general level, it may not be
8 appropriate to describe the nature of this work.
9 The more specific it becomes, the more it is likely
10 and will fall within either attorney work product or
11 deliberative process or investigative privilege and
12 really we would see matters related to potential
13 criminal or civil investigations as not the proper
14 subject of testimony.

15 So I want to allow this to go as far
16 as we can help and so it will help to go from the
17 general to the specific and will help me draw my
18 lines.

19 MR. SWEENEY: Sure.

20 BY MR. SWEENEY:

21 Q. What individuals did you talk to in the
22 Office in connection with your view of the use of
23 semi-automatic rifles in crime?

24 A. There was a discussion among the group of

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1 people I mentioned in the prior answer; people from
2 the Criminal Bureau, people in the Government
3 Bureau, Deputy Attorney General, State Solicitor, as
4 well as a few others who would participate from time
5 to time.

6 Q. You mentioned research. What sources of
7 information did you consult on that issue?

8 A. A variety of things; newspaper articles
9 and other material that's available on the Web in
10 various forms, as well as reports about gun crime
11 that are also publicly available, some scholarly
12 articles as well.

13 Q. Did you consult any sources of data for
14 the use of semi-automatic rifles in crime in
15 Massachusetts?

16 A. I would say that we were evaluating the
17 use of semi-automatic rifles in crime across the
18 country, so there was a good deal of material that
19 would have touched on whether there were incidents
20 in Massachusetts, and for the most part what we were
21 looking at were machines.

22 Q. Do you have any information about how
23 often semi-automatic rifles had been used in murders
24 in Massachusetts, say, in the past 20 years?

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1 stated. The East Boston incident was not
2 investigated or prosecuted by the Attorney General,
3 so we would largely be -- to start answering that --

4 MR. SWEENEY: It is bad enough -- off
5 the record.

6 (Discussion off the record.)

7 Q. Are you aware of any other incidents,
8 other than the two identified here, in which more
9 than ten shots were fired by a single criminal
10 perpetrator in a single incident in Massachusetts?

11 A. I am confident that there are other
12 incidents, but again, it would be difficult to
13 identify them based on records available to the
14 Attorney General.

15 Q. Now, Interrogatory No. 3 on Page 10 asked
16 to identify any incident in which an individual used
17 a banned firearm or banned magazine in self-defense
18 in Massachusetts.

19 After objections, "The AG states she
20 has no non-privileged information that is responsive
21 to this interrogatory at this time."

22 I take it that you're not aware of
23 any such incident?

24 A. I am not.

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1 A. And individuals are responsible for
2 registering individual sales.

3 Q. And in either event, no firearms was
4 transferred to Massachusetts without registration,
5 correct?

6 MR. PORTER: Objection to the form.

7 Q. According to law?

8 A. According to law, yes.

9 Q. And what agency processes those
10 registrations?

11 A. It's CJIS, the Criminal Justice
12 Information Service which is a division -- and
13 you'll have a witness on this, and I apologize, I
14 may not get this right, but my understanding is that
15 it is a division that is operated by EOPSS,
16 E-O-P-S-S, the Executive Office of Public Safety and
17 Security.

18 Q. You'll defer to that witness who will be
19 talking tomorrow on the details of that, but that's
20 your understanding?

21 A. Including on whether I have the exact name
22 of the organization.

23 Q. That's fine. Does the Office of the
24 Attorney General take a position with respect to

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1 whether the registration of a fireman is an approval
2 of that firearm as being compliant with
3 Massachusetts law?

4 A. Yes.

5 Q. And what is that position?

6 A. That it is not approval.

7 Q. And what is the basis for that position?

8 A. A number of things. The information
9 registered wouldn't be sufficient to make a
10 determination of whether the firearm has lawfully
11 transferred.

12 Q. To your knowledge, is there any process
13 within the Massachusetts government that is designed
14 to ascertain transaction by transaction whether or
15 not the firearm is compliant with Massachusetts
16 law?

17 A. I would say the compliance review we
18 undertook was consistent with making that
19 evaluation.

20 Q. And what conclusions did your compliance
21 review reach with respect to that evaluation?

22 MR. PORTER: Objection to the form of
23 that question.

24 A. May I consult with Mr. Porter again on

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1 substantially similar in construction and
2 configuration to those of an enumerated weapon?

3 A. It provided this in the enforcement
4 notice.

5 Q. This enforcement says "substantially
6 similar," and you haven't provided any elaboration
7 on what substantially similar means. So have you
8 provided any guidance to dealers that tells them how
9 to determine whether it is substantially similar?

10 MR. PORTER: I think the question has
11 been asked and answered. Objection.

12 A. We provided the enforcement notice. The
13 language is understandable and appears to be
14 understood by gun sellers who are not selling
15 AR-15s, AK-47s or other copies and duplicates at
16 this time.

17 Q. In the next sentence of the similarity
18 test it says: "If the operating system and firing
19 mechanism are based on or otherwise substantially
20 similar to one of the enumerated weapons," what does
21 it mean to be "based on"?

22 A. You know, I think the language is clear
23 enough. Based on the same plan.

24 Q. How is that different from "substantially

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1 duplicate of an assault weapon?

2 A. Yes, and further to clarify, we are
3 referring here to the two paragraphs at the end of
4 Page 4 of the enforcement notice.

5 Q. So if one of my client dealers has
6 purchased a firearm in the past and sold it and no
7 longer is in possession of it, this directive will
8 not be applied to those guns?

9 A. A directive would not be applied but the
10 assault weapon ban may be, the statute may be.

11 Q. Because it might otherwise apply?

12 A. Yes.

13 Q. What was the definition of copies and
14 duplicates that was used prior to the Notice of
15 Enforcement test for copies or duplicates?

16 MR. PORTER: Objection as to form.

17 A. I'm sorry, can I get the question read
18 back?

19 MR. SWEENEY: Read the question
20 back.

21 (The question was read back.)

22 A. Could you rephrase the question?

23 Q. You said the tests that are in the Notice
24 of Enforcement won't be used for anything prior to

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1 July 20, 2016. So what is the definition of copies
2 and duplicates that will be applied to any of those
3 transactions?

4 A. Whatever the authority involved believes
5 to be the accurate appropriate test under the
6 statute itself.

7 Q. And what test does the Office of the
8 Attorney General use?

9 MR. PORTER: Objection. I have to
10 instruct the witness not to answer that question.
11 The only information that the witness can testify to
12 about prosecutorial positions is information that is
13 public, not information that might suggest how a
14 certain prosecution will be framed in the future.
15 That will be work product and subject to
16 privilege.

17 Q. Just so I understand, there's a Notice of
18 Enforcement that gives guidance on compliance to
19 dealers and citizens about how this office, the
20 Office of the Attorney General will interpret copies
21 or duplicates from July going forward, July 2016
22 going forward, correct?

23 A. That's correct to state it. I mean, there
24 may be individuals in the law enforcement community

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1 including in our office that thought these tests
2 were the appropriate tests under the statute all the
3 way through.

4 Q. But you won't tell me what tests are used
5 for transactions that occurred prior to July 20 --

6 MR. PORTER: Let me object and make
7 my objection clear. We won't tell you and I'll
8 instruct the witness not to answer in a way that
9 reveals internal communications, non-public
10 communications, about possible prosecutorial
11 positions or approaches of the Attorney General's
12 Office that are non-public, that are discussions and
13 positions being assessed within the office. That's
14 both work product and subject to deliberative
15 process and privilege.

16 Q. The tests that are in the Notice of
17 Enforcement, if I understand your last response, may
18 or may not be used by various enforcement
19 authorities in the State of Massachusetts?

20 A. They may be considered relevant, I guess.
21 Let me amplify my answer because I think it will
22 probably speed up the rest of the afternoon.

23 The statute itself bans copies or
24 duplicates of guns including Colt AR-15s. An AR-15

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
Worcester, ss.

I, Jennifer A. Doherty, Certified
Shorthand Reporter and Notary Public duly
commissioned and qualified in and for the
Commonwealth of Massachusetts, do hereby certify
that there came before me on the 29th day of August,
2017, the person hereinbefore named, who was by me
duly sworn to testify to the truth and nothing but
the truth of their knowledge touching and concerning
the matters in controversy in this cause; that they
were thereupon examined upon their oath, and their
examination reduced to typewriting under my
direction and that the deposition is a true record
of the testimony given by the deponent.

I further certify that I am neither
attorney nor counsel for, nor related to or employed
by, any of the parties to the action in which this
deposition is taken, and further that I am not a
relative or employee or financially interested in
this action.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY
HAND AND SEAL THIS 3RD DAY OF SEPTEMBER, 2017.

Notary Public
My Commission Expires:
October 19, 2023
CSR No. 1398F95

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1 I, Gary Klein, do hereby certify that I
2 have read the foregoing transcript of my testimony,
3 (with the exception of corrections listed on the
4 errata sheet, if ^{attached} any) and further certify that said
5 transcript is a true and accurate record of said
6 testimony.

7 DATED AT Boston, MA,
8 this 28th day of September, 2017.

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SIGNED UNDER THE PAINS AND
PENALTIES OF PERJURY.



Worman, et al. v. Baker, et al.
17-cv-10107

Deposition Transcript of Gary Klein
August 29, 2017
ERRATA

The following corrections to the transcript apply:

PAGE	LINE	CORRECTION	REASON
6	18-19	"class members" should be "litigation"	Clarify or correct answer
7	11	"Loss" should be "Law"	Correct reporter's error
12	10	"John" should be "Jon"	Correct spelling
16	21	"Machines" should be "summaries"	Correct reporter's error
29	14	Delete "not"	Correct reporter's error
30	2	"her amendment" should be "or amend"	Correct reporter's error
58	2	"schedule" should be "scheduled"	Correct reporter's error
62	15	"is" should be "are"	Correct reporter's error
72	18	"Colt 15" should be Colt AR-15	Clarify or correct answer
94	9	"pending" should be "including"	Correct reporter's error
94	13	"I have" should be "At"	Correct reporter's error
126	18	"following" should be "follow on"	Correct reporter's error
133	21	"test and" should be "tests in"	Correct reporter's error
150	18	Tech" should be "Tec"	Correct spelling
154	18	"designed" should be "design"	Correct reporter's error
158	2	"wind up" should be "wind up in"	Correct reporter's error
162	9	"A" should be "The"	Correct reporter's error
163	23	"to state it" should be "as stated"	Correct reporter's error
169	3	"precedence" should be "precedents"	Correct spelling
177	4	"and" should be "but they"	Correct reporter's error
183	5	"we" should be "we would"	Correct reporter's error

EXHIBIT 2
TO KAPLAN DECLARATION

DAVID SETH WORMAN, et al.,) Case No. 1:17-cv-10107-WGY
)
)
Plaintiffs,)
)
vs.)
)
)
MAURA HEALEY, et al.,)
)
)
Defendants.)
)

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1	I N D E X		
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15		and Disaster Medicine, Volume 5,	
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1 BE IT REMEMBERED that, pursuant to Notice and
2 Subpoena, on Wednesday, November 8, 2017, commencing at
3 the hour of 8:54 a.m., before me, CELIA A. ZARATE, CSR
4 No. 10769, a Certified Shorthand Reporter in the State of
5 California, there personally appeared

6 CHRISTOPHER B. COLWELL, M.D.,
7 called as a witness by the Plaintiffs, who, having been
8 first duly sworn was examined and testified as
9 hereinafter set forth:

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1 A. I disagreed with one of the statements they
2 made. It's a fairly long explanation. I don't know how
3 much you want to know about this. In short, there
4 were -- as short as I can be, there were people
5 that rendered opinions after this, which is typical for a
6 major event, some of which were accurate and some of
7 which were not, and one of those opinions was published
8 in the U.S. Fire Administration major incidents
9 investigative team report, that included a statement made
10 by one firefighter that had not been at the scene that
11 day, that expressed the opinion that my decision to go
12 into the library to pronounce them dead was against law
13 enforcement orders, which was not the case.

14 Q. Well, in your report, which we marked as Exhibit
15 3, and which you have in front of you, on the second
16 page, first sentence, you say: I have experienced
17 firsthand the extensive damage caused by assault weapons
18 and have witnessed both victims and on occasion even the
19 shooters experienced the horror of what these weapons do.

20 Did I read that correctly?

21 A. Yes.

22 Q. All right. And at the bottom of that page you
23 say: My firsthand experience treating victims of gunshot
24 wounds includes being the physician at the scene of the
25 Columbine High School shootings on April 20th, 1999, in

1 which a TEC-DC9 weapon was used, and treating victims of
2 the Aurora Theater shootings in the emergency department
3 on July 20th, 2012, in which an AR-15 was used.

4 Do I have that correct as well?

5 A. Yes.

6 Q. All right. And with the exception of your
7 involvement as -- in the Columbine and Aurora shootings,
8 which we'll get into in more detail in a moment, what
9 other experience have you had firsthand treating damaged
10 caused by assault weapons?

11 A. Well, my role as an emergency physician in an
12 urban level one trauma center requires that we treat
13 victims of all types of violence, and throughout the
14 course of my time there, have been called upon to treat
15 many victims of gunshot wounds, some of whom have been
16 victims of assault rifles or weapons.

17 Q. All right. How many times -- setting aside
18 Columbine and Aurora -- have you treated anyone who has
19 been shot by an assault weapon?

20 A. I would be guessing. An estimate would be 30,
21 40 times.

22 Q. All right. We talked earlier about your
23 testimony as an expert witness. Have you ever testified
24 as an expert witness on the type of gun that was used
25 in creating a gunshot wound that you had treated?

1 MR. COLLINS: Objection.

2 THE WITNESS: Not specifically asked about the
3 type of wound, but asked to give my experience in
4 treating a wound where it was clear what type of weapon
5 was used.

6 Q. BY MR. SWEENEY: All right. Have you ever given
7 an opinion as an expert or as a treating physician on
8 what type of firearm was used based upon your
9 observations from treating the wound?

10 MR. COLLINS: Objection.

11 THE WITNESS: No. Not specifically on the type
12 based on wound. No.

13 Q. BY MR. SWEENEY: All right. And in every case
14 where you were able to identify what kind of firearm was
15 used, it's because someone told you what kind of firearm
16 was used, correct?

17 A. I would say certainly for the large majority, as
18 with the case of Columbine I did see the weapon.
19 Although, in all honesty, when I saw the weapon I was not
20 able to say that was a TEC-DC9.

21 Q. All right. Other than your experience
22 in emergency medicine, do you have any special education
23 or training in treating gunshot wounds?

24 MR. COLLINS: Objection.

25 THE WITNESS: Outside of my role as an emergency

1 physician in the academic environment trauma center, and
2 all those types of things, I can't think of something
3 specific outside of those roles.

4 I'm responsible for teaching residents and in
5 some cases faculty of other specialties with -- in areas
6 of advanced trauma life support, or ATLS, and other areas
7 where we would talk about gunshot wounds, and so there
8 are a lot of different courses that I both take and teach
9 in response to that, but they're all related in some way
10 to my role as both an emergency physician and then
11 sometimes as the chief of the emergency department.

12 Q. BY MR. SWEENEY: When you have treated patients
13 who you understood to have experienced gunshot wounds
14 caused by assault rifles, what did your treatment involve
15 in those cases?

16 MR. COLLINS: Objection.

17 THE WITNESS: I mean, it can involve virtually
18 any aspect of caring for patients.

19 Q. BY MR. SWEENEY: All right. Do you recall that
20 you ever applied emergency bandages?

21 A. Yes.

22 Q. Tourniquets?

23 A. Yes.

24 Q. Nasopharyngeal tubes?

25 A. Yes. More likely endotracheal tubes, but

1 certainly in some cases nasopharyngeal tubes,
2 particularly prior to putting in an endotracheal tube.

3 Q. Did you ever remove bullets or a bullet from
4 fragments from gunshot wounds?

5 A. Very rarely, but it has happened.

6 Q. All right. And very rarely, what were those
7 circumstances?

8 A. When it was right there and obvious and with law
9 enforcement, we were exploring a wound, saw the bullet
10 and said there it is.

11 Q. All right. But typically in the -- I think you
12 said over a thousand patients with gunshot wounds, you
13 personally don't remove bullets or bullet fragments?

14 A. I don't go in with a specific purpose of
15 removing them. If as part of managing them it becomes
16 part of that, which is rare, we will remove them, but
17 that is not the intent or purpose of what we're doing.

18 Q. All right. In the thousands of patients with
19 gunshot wounds, how many times were you actually shown
20 the firearm that was used to shoot the projectile that
21 caused the wound?

22 A. The actual firearm itself, very rarely.

23 Q. And whatever information you would receive, what
24 would the source of the information about the type of
25 firearm used to the extent you ever knew?

1 A. Law enforcement.

2 Q. And by law enforcement, would that be a law
3 enforcement officer who might accompany the victim for
4 the hospital?

5 A. So often there's a variety of law enforcement
6 officers involved in these episodes, and some company --
7 the victim and/or perpetrator, others come in later as
8 part of the investigative process, but often still
9 while the patient is in the emergency department, or
10 directly thereafter, and it's not always clear to me what
11 role they are in, but there are often multiple different
12 law enforcement folks that are involved in these
13 situations.

14 Q. In connection with the -- over a thousand
15 patients with gunshot wounds that you've treated, have
16 you ever conducted forensic analysis of the trajectory of
17 the bullet that caused any of those wounds?

18 MR. COLLINS: Objection.

19 THE WITNESS: I don't know that I would call it
20 a forensic analysis. There have been times when law
21 enforcement asked me to describe what I thought was a
22 trajectory of the wound based on what we were seeing, but
23 I wouldn't call that a forensic analysis.

24 Q. BY MR. SWEENEY: Would the trajectory of the
25 bullet causing gunshot wounds be an area that you would

1 consider yourself an expert in?

2 A. I'm not sure that that particular area has
3 expertise or non-expertise, other than in my world,
4 treating those, I would classify myself as an expert in
5 evaluating those wounds. I'm not sure I would classify
6 myself as an expert in determining a trajectory.

7 Q. All right. Have you ever given an opinion in a
8 court proceeding, at deposition, or at trial with respect
9 to the trajectory of a bullet in any of the gunshot
10 wounds that you've treated?

11 MR. COLLINS: Objection.

12 THE WITNESS: I don't recall a specific event.
13 I will sometimes get a question of, did this wound
14 represent potentially serious bodily injury
15 and/or life-threatening issues, and so I will then be
16 asked to say if my answer is yes, why, and oftentimes
17 part of that explanation is this was in the vicinity or
18 directly impacting a significant organ vessel, something
19 that would represent a life threat.

20 Q. BY MR. SWEENEY: When you were able to
21 personally observe the bullet used to cause the gunshot
22 wound that you were treating, were you able to
23 identify it -- the type of bullet it was as full metal
24 jacketed, soft-point, hollow point, et cetera?

25 A. I was not myself, no.

1 Q. All right. Is that something you're capable of
2 doing based on your expertise?

3 A. No.

4 Q. And have you treated -- in the thousands of
5 patients with gunshot wounds that you treated, how many
6 of them had multiple wounds from multiple bullets?

7 A. I don't have an absolute number for you. There
8 were more with single wounds than with multiple wounds,
9 but there were a number with multiple wounds.

10 Q. And when they're multiple wounds, some of them
11 may be exit wounds as opposed to entrance wounds where
12 the bullet actually left the body as opposed to the wound
13 where the bullet entered the body, correct?

14 A. That is true. We have to be careful about that
15 from a medical perspective, because when we -- first of
16 all, we don't seem to be particularly good, according to
17 literature at determining what was an entering and exit
18 wound as a global profession; and, number 2, often my
19 message when teaching about these issues, if you assume
20 it's only one bullet you have the risk of missing
21 something, if you assume it was two, and treated it as
22 such, you're less likely to miss something.

23 So there are times when in retrospect it turns
24 out to be, as you've described, but we often need to when
25 we see two wounds assume that it's multiple areas. Other

1 times it's very obvious that it's multiple.

2 Q. Have you ever been asked to give an opinion as
3 an expert or as treating physician on whether multiple
4 wounds were caused by multiple bullets in any of the
5 patients that you treated?

6 A. Yes.

7 Q. All right. And how many occasions was that?

8 A. I don't recall a specific number. It would be a
9 number of them.

10 Q. All right. And do you recall anyone in which
11 you gave that testimony and what the basis for your
12 opinion was?

13 A. So I don't remember the exact case or date. I
14 do remember specifically three wounds to the abdomen and
15 was asked, is it likely that these represent three
16 different wounds, or a potential entry and exit wound,
17 and I said it was very unlikely that this represents a
18 entry and exit wound. This from my perspective
19 represents three different wounds.

20 Q. And that's sometimes a question at issue, and
21 not one that is necessarily obvious from observation,
22 correct?

23 A. Correct.

24 Q. And what have you done with any bullets that you
25 have personally removed from any of the gunshot wounds

1 that you have treated?

2 A. Handed them immediately to law enforcement.

3 Q. Right. And you've never retained any of those
4 bullets, correct?

5 A. No.

6 Q. Have you made any study of the ballistics
7 analysis of any of the bullets that were removed from the
8 patients for which you've treated gunshot wounds?

9 MR. COLLINS: Objection.

10 THE WITNESS: I'm sorry. I missed the first
11 part.

12 Q. BY MR. SWEENEY: Have you ever done a study of
13 the ballastic analysis of any bullets that were removed
14 from the patients who you treated with gunshot wounds?

15 MR. COLLINS: Objection.

16 THE WITNESS: So I haven't done a study of that.
17 I've read some of the analysis but, no, I have not done a
18 study of those.

19 Q. BY MR. SWEENEY: All right. Do you have any
20 listing of the number of patients that you've treated
21 with gunshot wounds?

22 A. No.

23 Q. And have you made any notes and recorded the
24 different characteristics of the wounds for each of those
25 over a thousand patients that you've treated with gunshot

1 wounds?

2 A. No.

3 Q. When you removed a bullet from a wound, and you
4 have on more than one occasion, were you able to identify
5 the caliber based upon your observation of it?

6 A. No.

7 Q. Recalling your time spent at St. Joseph's --

8 A. (Nods head.)

9 Q. -- can you estimate how many gunshot wounds you
10 treated there -- how many patients with gunshot wounds
11 you treated while you were at St. Joseph's?

12 A. I was there for two years and probably saw
13 anywhere between 10 and 15 patients total. We weren't
14 the designated level one trauma center there, so we were
15 less likely to get gunshot wounds but we did get them.

16 Q. All right. And do you recall any breakdown of
17 the types of firearms that you understood to have been
18 used in those 10 to 15 gunshot wounds that you treated at
19 St. Joseph's?

20 A. Most of them were shotgun injuries and/or
21 hunting rifles with one exception.

22 Q. And that's in New Hampshire, correct?

23 A. No. That was in Ann Arbor or actually
24 Ypsilanti, spelled with a Y.

25 Q. All right.

1 A. Right on the border of Ann Arbor and Ypsilanti.

2 Q. At Denver Health, how many gunshot wounds have
3 you treated there?

4 A. Most of the victims I've seen.

5 Q. All right. And how many gunshot wounds have you
6 treated since you've been in San Francisco at Zuckerberg?

7 A. In about a year and a half, a similar rate as
8 Denver Health, but far less time there. Somewhere in the
9 neighborhood of 30 to 40.

10 Q. All right. And of those 30 to 40 patients
11 you've seen in San Francisco with gunshot wounds, did you
12 provide hands-on treatment of their wounds?

13 A. Yes.

14 Q. Do you have any breakdown of the 30 to 40
15 gunshot wound patients that you saw based on the type of
16 firearm that was used?

17 A. No.

18 MR. COLLINS: Objection.

19 Q. BY MR. SWEENEY: Do you know if any of them
20 involved assault rifles?

21 A. Yes.

22 Q. More than one?

23 A. Yes.

24 Q. Can you estimate how many more than one?

25 A. In the neighborhood of ten.

1 Q. All right. Is it your understanding that
2 assault rifles are banned in the State of California?

3 MR. COLLINS: Objection.

4 THE WITNESS: I actually don't know the wording
5 of the law in California.

6 Q. BY MR. SWEENEY: Okay. You haven't been invited
7 to the range by the police in California to shoot AR-15s
8 or AK-47s since you've been here, have you, Doctor?

9 A. No, I have not.

10 Q. At Denver Health did you treat gunshot wounds
11 from shotguns?

12 A. Yes.

13 Q. Can you estimate how many times?

14 A. Multiple. It would be a real guess, fifty.

15 Q. All right. And what about hunting rifles?

16 A. Less frequent than in Michigan, but
17 still certainly a number of them. Many of them were
18 transfers, and often that information came from the
19 victim and/or family as opposed to law enforcement,
20 necessarily, but we would get transfers from rural areas
21 that would be more likely to be victims of hunting
22 rifles.

23 Q. All right. And you talk about your experience
24 with the Columbine and the Aurora mass shootings. In
25 terms of the gunshot wounds that you observed in

1 those two shootings, were there any significant
2 difference in the nature of those wounds, the severity of
3 them?

4 A. Not a significant difference.

5 Q. All right. Any differences at all that you can
6 recall between the gunshot wounds that you
7 observed following the Aurora shootings and the wounds
8 following the Columbine shootings?

9 A. Well, I have vivid memories of wounds from both
10 of those scenes, and they certainly weren't exactly the
11 same. I don't recall a specific pattern or difference in
12 patterns. Remembering that I was at the scene at
13 Columbine so I saw a different view and in some
14 cases fatal wounds that had not moved from that fatal
15 position, which is unusual for an emergency physician to
16 see.

17 Even when we see fatal wounds they're often --
18 have been obviously moved and brought into the emergency
19 department, and so the position they're in looks
20 different. So I have vivid memories of the wounds both
21 at the scene in Columbine and patients that have been
22 brought out, and I saw, and then wounds that I saw in the
23 emergency department at Aurora, but I don't -- I can't
24 think of a particular pattern that I notice that was
25 different between them.

1 Q. You never served in the military, am I correct?

2 A. I have not.

3 Q. And you've never been under the employment of A
4 law enforcement agency, am I correct?

5 A. No. We had discussed and entered into some
6 agreements with the police in terms of providing medical
7 oversight, but in terms of being a law enforcement
8 officer, no.

9 Q. Have you ever observed anyone being shot?

10 A. No.

11 Q. Your report references on the second page: In
12 one instance a man who shot his girlfriend said he had no
13 idea how destructive assault weapons can be.

14 Do you see that sentence?

15 A. I do.

16 Q. All right. What do you recall about
17 that incident? When did it occur?

18 A. This was a number of years ago. A weekday
19 evening -- I don't know how much detail in terms of when,
20 but I do recall specifically it was a weekday evening,
21 because it involved a argument after both parties had
22 gotten home from work.

23 Q. All right. And do you recall the circumstances
24 of the shooting as it was communicated to you how far
25 away was the shooter from the patient?

1 A. He described being across the room, but I don't
2 have in terms of feet or meters.

3 Q. Did he fire more than one shot?

4 A. Yes. Although he claimed to have intended to
5 only fire one.

6 Q. Were there more than one wound on your patient?

7 A. Yes.

8 Q. How many wounds?

9 A. Four.

10 Q. And were you able to determine if they
11 were all entrance wounds or some of them might be exit
12 wounds?

13 A. The wounds we were looking at were all -- when I
14 say four, it was four on the front. There were also four
15 on the back. So I guess the correct answer to your
16 question earlier was eight, but we assessed it as
17 four entry wounds in the setting of how it was described.

18 Q. So in your opinion at least the patient you
19 treated was struck from relatively close range with four
20 bullets in the chest, correct?

21 MR. COLLINS: Objection.

22 THE WITNESS: It depends on how you define close
23 range. He described it as, I was across the room
24 and implied that he thought, therefore, he was safe.

25 Q. BY MR. SWEENEY: What is your understanding of

1 how far he would have been away from this patient? Based
2 on his description to you, what was your takeaway from
3 that?

4 A. He described a far distance. So my takeaway
5 was a -- he described the living room, a large room that
6 had at least 20, 30, 40 feet, but that was -- he did not
7 say that specific distance.

8 Q. Are there any firearms that you're aware of
9 that when shot from 40 feet away, four bullets entering
10 the chest of a patient would not cause serious if
11 not fatal injuries?

12 A. I'm not aware of a firearm that wouldn't at
13 least potentially if not really cause damage.

14 Q. And what became of your patient in that
15 instance?

16 A. She died.

17 Q. In the sentence before that you mentioned the
18 shooters experienced the horror of what these weapons do.
19 Who are you refering to as the shooters experiencing the
20 horror of what these weapons do? Is that a reference to
21 the young man who shot his girlfriend?

22 A. That was one, and there were several others, if
23 not a large number, and I didn't -- certainly talk to
24 most of the shooters involved here, but do have very
25 specific memories of several shooters that would describe

1 that.

2 Q. Did you have any involvement in any criminal or
3 civil proceedings that came out of the incident of the
4 young man shooting his girlfriend?

5 A. I don't recall specific involvement there, but
6 remember that involvement can involve several things.
7 Initially I fill out a serious bodily injury form, which
8 I'm quite certain I did there, then it's a subpoena. A
9 subpoena involves multiple discussions, may or may
10 not involve my being called to testify, and then whether
11 or not the case went to trial. I did not testify in this
12 particular trial. If I recall correctly, they came to an
13 agreement prior to going to trial, and I had been asked
14 several questions about this. I didn't testify.

15 Q. All right. Do you know if the young man went to
16 jail for shooting his girlfriend?

17 A. Yes.

18 Q. What was your understanding of the make and
19 model of the firearm that he used?

20 A. He described it as a TEC-DC9.

21 Q. Do you know what the caliber of the bullets
22 were?

23 A. I don't.

24 Q. Do you know if it was a automatic or a
25 semiautomatic version of that firearm?

1 A. I don't know. He said: I meant to pull the
2 trigger once, and there were at least four shots. That's
3 the only information that he gave me.

4 Q. And that easily could have happened if it were
5 an automatic firearm without him pulling the trigger more
6 than once, correct?

7 MR. COLLINS: Objection.

8 THE WITNESS: I would imagine.

9 Q. BY MR. SWEENEY: Any other experiences
10 involving shooters of assault weapons that you can recall
11 other than this specific one?

12 A. Yes. There were at least three or four other
13 times when we would also treat the shooter that they
14 specifically expressed concern that they had not intended
15 to cause anywhere near the damage that they had.

16 Q. Have you ever had the discussion with any
17 shooters of firearms other than what you understand to be
18 assault weapons about their experience of the shooting?

19 A. Had discussions about their experience with the
20 shootings, yes.

21 Q. All right. Is there any of them that didn't
22 express shock and horror at what they've done with the
23 shooting?

24 A. One did. That was not an assault weapon. It
25 was a shotgun.

1 Q. And do you recall what happened with
2 the individual who was shot by the shotgun in that case?

3 A. Yes. He unfortunately died also.

4 Q. Is it typical that after you treat a patient
5 with gunshot wounds that you have follow-up with them
6 and/or their families over the course of their recovery?

7 A. I wouldn't describe it as typical, no.

8 Q. Okay. Can you estimate how many times that's
9 happened?

10 A. Certainly many times. More than 20 or 30
11 depending on the context. So there will be times when
12 they come back for wound checks and/or complications
13 related to their -- excuse me. Their injuries. There
14 will be other times when we will interact during either
15 criminal or civil cases, and occasionally times when they
16 will come back and say thank you, or express appreciation
17 or have other questions about what we saw in the
18 emergency department.

19 Q. Is it typical that when you do have follow-up
20 with the patients and/or with their families, it's cases
21 that involve more severe gunshot wounds?

22 A. Yes. Although there's certainly exceptions to
23 that.

24 Q. On page 3, you reference a vivid example was a
25 recent victim of a shooting from a non-assault weapon

1 presented to our emergency department with an elbow
2 wound. You were able to treat this wound and release the
3 patient from the ED. When did that occur?

4 A. About eight months ago.

5 Q. Okay. And what was your understanding of the
6 firearm that was used?

7 A. My understanding was that it was a .9 millimeter
8 pistol.

9 Q. All right. And do you have any information
10 about the circumstances of the shooting, including how
11 far away the shooter was from the victim?

12 A. The victim was running and was shot from behind
13 in the range of 20 to 30 feet, and the only reason that I
14 remember that is because -- and the reason that it is
15 vivid is because a patient that was very similar in terms
16 of gender, age, build, came in not long after that also
17 running from the shooter, also in the 20 to 30 feet range
18 with a AK-47. Shot at almost the same spot.

19 Q. And what size bullets are used in a AK-47?

20 A. I don't know.

21 Q. And the wound that you treated for the first
22 elbow injury, what exactly did you observe the bullet had
23 done when it struck the elbow?

24 A. There was a puncture wound to what we described
25 as the posterior aspect of the elbow that was a single

1 wound and that was really all we saw, similar to the
2 other victim as well, other than the other victim
3 had clear damage that went further down the arm, but the
4 wound itself was in essentially the same spot.

5 Q. In the first case had the bullet struck a
6 bone?

7 A. We don't know if it struck the bone, but it did
8 not break the bone.

9 Q. All right. So it might not have even struck the
10 bone?

11 A. Correct.

12 Q. In the second case it was pretty clear from your
13 observation that the bullet had struck the bone, correct?

14 A. Clearly.

15 Q. Are there any other differences between the two
16 wounds that you recall?

17 A. Well, on X-ray we saw the bullet for the first
18 wound and did not for the second.

19 Q. Okay. What happened to the bullet for the
20 second?

21 A. It left the arm.

22 Q. Exit?

23 A. Yeah.

24 Q. And is that consistent with -- scratch that.

25 (Break taken from 11:02 a.m. to 11:10 a.m.)

1 particular document. No.

2 Q. Okay. And am I correct from your report that
3 your involvement with the shootings at the Century 16
4 Theater in Aurora was limited to your receiving and
5 treating patients at the ER at Denver Health, correct?

6 A. Yes.

7 Q. You weren't at the scene?

8 A. I was not at the scene.

9 Q. All right.

10 A. We received patients both immediately from the
11 scene and then later in transfer as well.

12 Q. All right. And on page 75 there is a Table 7
13 that lists hospitals receiving patients and it lists
14 Denver Health -- Denver General as having received five
15 patients. Is that consistent with your recollection?

16 A. Five initially from the scene, and then there
17 were at least four more that were transferred later to
18 us.

19 Q. So you recall a total of nine patients that came
20 out of the Century 16 Theater shooting that came to
21 Denver Health to be treated?

22 A. I believe so. It may have been one up or one
23 down from that, because again transfers happen both
24 within hours and then one even a day later, but, yes, I
25 believe it was around that number.

1 Q. And of those eight or nine patients, how many of
2 them had gunshot wounds?

3 A. All of those did.

4 Q. All right. So some patients arrived a day or
5 two later with gunshot wounds. Is that --

6 A. At least one did -- transferred from another
7 facility. So they were seen initially at another
8 facility and then transferred -- we were the level one
9 trauma center -- to us as the regional level one trauma
10 center.

11 Q. Did any of the eight or nine patients that you
12 saw at Denver Health from the Aurora shootings have
13 multiple gunshot wounds?

14 A. Yes.

15 Q. How many?

16 A. At least one.

17 Q. Okay.

18 A. I don't recall exactly how many.

19 Q. Were you able to tell from your treatment of
20 those individuals what type of firearm had caused their
21 gunshot wounds?

22 MR. COLLINS: Objection.

23 THE WITNESS: From that treatment, no.

24 Q. BY MR. SWEENEY: All right. Did you remove any
25 bullet or bullet fragments from those eight or nine

1 patients?

2 A. No.

3 Q. And did you see any bullets or bullet fragments
4 removed from those patients?

5 A. No.

6 Q. And did you receive any information about the
7 type of firearms that were used in those shootings?

8 A. From law enforcement, yes.

9 Q. And what were you told?

10 A. I was told that at least one of the weapons was
11 an AR victim.

12 Q. Was it your understanding that there was more
13 than one weapon used?

14 A. Yes.

15 Q. And do you know what the other weapons were?

16 A. No. I was told at the same time, but I don't
17 recall.

18 Q. All right. And you don't know which of those
19 different weapons were used to make the gunshot wounds in
20 the patients you treated from the Aurora shootings,
21 correct?

22 A. No.

23 Q. If I could turn your attention to page 12 of
24 that report.

25 A. Not Roman numeral 12, regular page?

1 Q. On page 12, Arabic 12, yeah. This is a
2 reference to the --

3 MR. COLLINS: I don't think we're on the same
4 page.

5 Q. BY MR. SWEENEY: -- facts surrounding the
6 attack.

7 A. Attack starts?

8 Q. Right.

9 MR. COLLINS: Oh.

10 Q. BY MR. SWEENEY: At the bottom of the page it
11 says: The shooter carried into the theater a shotgun,
12 AR-15 style semiautomatic rifle, and a .40 caliber
13 semiautomatic handgun, correct?

14 A. Yes.

15 Q. It then skipping a sentence, it says: He first
16 opened fire with a shotgun firing six shells until he
17 exhausted its ammunition. Do you see that?

18 A. Yes.

19 Q. How many shotgun pellets would have been shot
20 into the crowd by him firing six shotgun shells?

21 A. I don't know.

22 Q. Dozens, if not hundreds, of pellets?

23 A. I would imagine.

24 Q. All right. And depending upon the size of shot,
25 they can be almost the same diameter as a .223 round

1 typically used in an AR-15, correct?

2 A. So my experience has been that the shotgun
3 pellets are far smaller, and that the AR-15 wounds have
4 been bigger and far more substantial.

5 Q. But you don't know if you were treating shotgun
6 wounds or AR-15 wounds from the patients you saw from the
7 Aurora shootings?

8 A. No. I don't recall any of the wounds that
9 looked like shotgun wounds or pellets, but I can't tell
10 you specifically what weapon was used.

11 Q. All right. It also says he fired five rounds
12 from the handgun on the next page, correct?

13 A. Yes.

14 Q. So you don't know whether or not any of the
15 wounds you treated were caused by a .40 caliber handgun,
16 correct?

17 A. I don't.

18 Q. And he did fire it says .65 -- at
19 least .65 high-velocity rounds from a magazine that was
20 AR-15. Do you see that?

21 A. Yes.

22 Q. So that may or may not have been more bullets
23 from the AR-15 than he fired in terms of total number of
24 shotgun pellets and handgun rounds, correct?

25 A. It may or may not have been.

1 Q. All right. Now, further down on that same page
2 at the bottom of the page it says: A few people were
3 wounded in the adjacent theater. They were struck by
4 bullets or shotgun pellets that had gone through the
5 common wall of the two theaters.

6 Do you see that?

7 A. I do.

8 Q. And do you know if you treated anyone from the
9 adjacent theater who had been struck by bullets or
10 shotgun pellets that had penetrated the common wall?

11 A. One of the patients I saw at Denver Health that
12 had a -- very bad extremity wound said he was in the next
13 theater. So I assume that was correct. This was not a
14 shotgun wound.

15 Q. How can you tell that?

16 A. I'm sorry?

17 Q. How can you tell that?

18 A. It was far bigger than a pellet from anything
19 I've seen from a shotgun wound. I have not seen a
20 shotgun wound that has gone through a wall. So my
21 experience has been that when they've gone through the
22 wall they've been different velocity or weapons, but this
23 was consistent with wounds I had seen from assault
24 weapons.

25 Q. Do you know what size buckshot the shooter was

1 using at Aurora?

2 A. I don't.

3 Q. And did you assume that if he had lethal intent
4 of killing people in that theater he would have chosen a
5 shot large enough to do that and not bird shot?

6 MR. COLLINS: Objection.

7 THE WITNESS: I would have to be in his mind to
8 do that, but I certainly would -- I would not be
9 surprised if his intent was to use whatever weapon would
10 be the most deadly. I did actually treat him as a
11 patient separately, but he didn't mention anything
12 about his intent.

13 Q. BY MR. SWEENEY: When you're saying "he," you're
14 referring to the shooter?

15 A. Yes.

16 Q. Can you tell me about your treatment of the
17 shooter prior to the event?

18 A. Oh, I didn't treat him before the event. It was
19 after the event.

20 Q. Oh, he was brought to your ER following the
21 event?

22 A. Three months following the event.

23 Q. What were those circumstances?

24 A. He was ill and needed to be seen in the
25 emergency department and was in custody and we are the

1 A. No.

2 Q. What is it about firearms that you call assault
3 weapons that causes them to fire bullets in such a way as
4 to create more extensive damage, if that is your
5 opinion?

6 A. So I would say it's not so much about the
7 weapon, but about the wounds that I have seen. So when I
8 look back and think about the number of wounds that I
9 have seen, the ones that have come from -- what we are
10 describing as assault weapons, have been more extensive,
11 have been more associated with more complications, and
12 greater injuries in general, than the ones that have come
13 from non-assault weapons.

14 Q. Have you done any research of the medical
15 literature to see if any studies have been done to
16 support that opinion?

17 MR. COLLINS: Objection.

18 THE WITNESS: So I have read a lot of the
19 medical literature. I have not done research
20 specifically to support or refute that opinion.

21 Q. BY MR. SWEENEY: And you didn't cite any such
22 authority in your report. Are you aware of any
23 authorities in the medical literature to support your
24 opinion in that regard?

25 A. No.

1 MR. COLLINS: Objection.

2 Q. BY MR. SWEENEY: And the cartridges used to
3 launch projectiles in assault weapons are also used in
4 other types of firearms that would not be considered
5 assault weapons, correct?

6 MR. COLLINS: Objection.

7 THE WITNESS: Are you asking if the bullets used
8 in assault weapons can be used in non-assault weapons?

9 Q. BY MR. SWEENEY: Yeah.

10 A. My understanding is yes.

11 Q. Would there be any difference in the severity or
12 extent of damage in the wounds caused by those same
13 bullets if they were launched from firearms that were not
14 assault weapons?

15 A. So I have to go back to my experience on that
16 and say that although I haven't put two wounds together,
17 one from the same bullet in an assault weapon and one
18 from the same bullet on a non-assault weapon, the damage
19 I've seen from assault weapons has been more extensive.

20 Q. And what explanation do you have for why that
21 is?

22 A. First, in terms of number of wounds. So they
23 have been associated with higher number of wounds. A
24 higher number of victims, but that's not a testimony to
25 the extent of the damage, but the next part is what would

1 seem to me would be the velocity and power of the
2 wound -- the bullet.

3 Q. Is there any difference between the velocity and
4 power of the same bullet being shot from an assault
5 weapon and from a non-assault weapon?

6 A. From my experience there has been, and as an
7 example when that gentleman who was running away from the
8 shooter and was shot in essentially the same spot from a
9 non-assault weapon and one that was shot from an AK-47,
10 and the non-assault weapon we discharged from the
11 emergency department after getting an X-ray and showing
12 that it wasn't a fracture and the bullet was still in the
13 wound, whereas the one shot with the AK-47 had the joint
14 destroyed, much of the bone destroyed, and ultimately had
15 to undergo an amputation. So my answer to that question
16 would be yes.

17 Q. All right. And just to confirm, I think we
18 touched on this before, but just to wrap it up, you
19 haven't made any practice of systematically recording for
20 every one of your gunshot wound patients the severity of
21 the wound and the specific firearm used, or even the
22 number of wounds in each patient, correct?

23 A. That's correct.

24 Q. Aren't you more likely to remember the more
25 devastating wounds that challenged your professional

1 homicides by blunt trauma have you treated?

2 A. Killed?

3 Q. Uh-huh.

4 A. Hundreds. I would say certainly far less than
5 the gunshot wounds, but of course the gunshot wounds were
6 not all fatalities.

7 Q. Now, of the -- of the thousand or so gunshot
8 wounds that you treated, how many of them were
9 fatalities?

10 A. We -- and this is an estimate also, 15 to 20
11 percent.

12 Q. And of the 30 to 40 assault weapon gunshot
13 wounds that you -- that you handled, how many of those
14 were fatalities?

15 A. About 50 percent.

16 Q. The hunting rifle accidents or homicides that
17 you've treated, how many of those were fatalities?

18 A. About 25 percent.

19 Q. And the shotgun wounds that you've treated, how
20 many of those were homicides?

21 A. Fatalities or homicides?

22 Q. I'm sorry. Fatalities. Thank you.

23 A. 10 to 15 percent.

24 Q. I think you're better at this than I am, by the
25 way. Are more people killed each year by shotguns than

1 THE WITNESS: Yes.

2 Q. BY MR. COLLINS: In your experience, and of
3 course we've talked at some length here today about what
4 that is, which includes treating patients at a level one
5 trauma center for 25-plus years, have you ever seen a
6 bullet or a projectile from an assault weapon? For
7 example, an AR-15 or an AK-47 or a TEC-9 remain lodged in
8 the body?

9 A. No.

10 Q. Ever?

11 A. Never.

12 Q. Okay. Can you say the same thing for a bullet
13 or a projectile from a non-assault weapon, for example, a
14 handgun?

15 A. No.

16 Q. Doctor, there's no question that you have both
17 seen and treated wounds that have been caused by assault
18 weapons, as we've defined that term here today, correct?

19 MR. SWEENEY: Objection. Leading.

20 THE WITNESS: Correct.

21 Q. BY MR. COLLINS: You can answer.

22 A. (Nods head.)

23 Q. And there's no question that you have seen and
24 treated wounds caused by non-assault weapons, correct?

25 MR. SWEENEY: Objection. Leading.

1 CERTIFICATE

2

3

4 I HEREBY CERTIFY that the witness was duly sworn
5 by me and that the deposition is a true record of the
6 testimony given by the witness.

7 It was requested before completion of the
8 deposition that the witness, CHRISTOPHER B. COLWELL,
9 M.D., have the opportunity to read and sign the
10 deposition transcript.

11

12 Celia A. Zarate
13 Certified Shorthand Reporter in the
14 State of California

15 CSR No. 10769

16 Dated: November 14, 2017

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EXHIBIT 3
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Charles D. Baker, et al.

James Cucuruto
Vol. 1
November 7, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
DAVID SETH WORMAN, et al.
Plaintiffs Case No.
vs. 1:17-cv-10107-WYG
CHARLES D. BAKER, et al.
Defendants
_____ /

The deposition of JAMES CURCURUTO was held
on Tuesday, November 7, 2017, commencing at 8:59 a.m.,
at Bradley, Arant, Boult, Cummings, LLP, 1615 L Street,
N.W., Suite 1350, Washington, D.C. 20036, before
Melinda Johnson, CSR, Notary Public.

REPORTED BY: Melinda Johnson, CSR

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1 expertise?

2 A Being the Director of Research and Market
3 Development at National Shooting Sports Foundation,
4 it's a normal course of business to provide our members
5 with reliable and accurate data, market data, that they
6 can use to make business decisions. And, under my
7 direction -- the majority of that research, over the
8 past eight years has been under my direction.

9 Q And when you say "provide our members," who
10 are your members?

11 A The National Shooting Sports Foundation is
12 a member-based trade association for the firearms and
13 ammunition industry. We have approximately 10,000
14 members made up primarily of firearm retailers,
15 shooting ranges, and manufacturers of firearms and
16 ammunition.

17 Q So would you say your expertise is related
18 to providing market data to those members?

19 A My expertise is indeed providing market
20 data to those individuals to help them make
21 better-informed business decisions.

1 Q And when you say "better-informed business
2 decisions," what is a better-informed business
3 decision?

4 MR. PORTER: Object to the form of the
5 question.

6 But you can answer if you can.

7 THE WITNESS: As with any business, the
8 more accurate and reliable data that you have available
9 prior to making a decision should benefit the positive
10 outcome toward making that decision if including
11 accurate and reliable data in your decision-making
12 process.

13 BY MS. KAPLAN:

14 Q Are positive outcomes for a business
15 growing the market for that business? And I'll put
16 that another way.

17 When you talk about positive outcomes in a
18 business setting, are you talking about, for example,
19 selling more firearms?

20 MR. PORTER: Object to the form of the
21 question.

1 But you can answer.

2 THE WITNESS: A positive business outcome
3 would be to have increased profit.

4 BY MS. KAPLAN:

5 Q But how do you increase your profit if
6 you're one of these businesses?

7 MR. PORTER: Object to the form of the
8 question.

9 But you can answer if you know the answer
10 to that.

11 THE WITNESS: Can you restate that
12 question, please.

13 BY MS. KAPLAN:

14 Q How does a business increase its profit --

15 MR. PORTER: Object to the form.

16 BY MS. KAPLAN:

17 Q -- to the extent that you know?

18 MR. PORTER: I object to the form of the
19 question.

20 But you can answer if you can.

21 THE WITNESS: Through increased sales.

1 BY MS. KAPLAN:

2 Q Do you have any other paid employment
3 currently?

4 A Other than the National Shooting Sports
5 Foundation, no.

6 Q Where did you work prior to the National
7 Shooting Sports Foundation?

8 A Immediately prior to the NSSF, I was
9 self-employed.

10 Q What were you doing when you were
11 self-employed?

12 A I formed an LLC called Marketing Memories
13 and had a website called framethatmoment.com where I
14 sold personalized engraved products.

15 Q Did you design and conduct surveys as part
16 of that position?

17 A Not surveys, no.

18 Q Where did you work before you were
19 self-employed at Marketing Memories?

20 A Scholastic, Inc.

21 Q What is Scholastic, Inc.?

1 A I do not know.

2 Q Do you know if NSSF provides any financial
3 resources to the National Rifle Association?

4 A I do not know.

5 Q Turning back to Exhibit 2, which is your
6 report. It says on Page 2, I believe, that you are not
7 receiving a fee in exchange for your opinions in this
8 case; is that correct?

9 A Correct. Other than my normal salary, no
10 additional fee.

11 Q So is today a normal work day for you?

12 A Yes.

13 Q Are you using vacation time to be here?

14 A No.

15 Q Who do you report to at NSSF?

16 A The Managing Director of Member Services,
17 Michael Vrooman, V-r-o-o-m-a-n.

18 Q And you said -- I'm sorry, he is the
19 managing director of what?

20 A Member services.

21 Q So is what you do considered to be part of

1 the services that NSSF provides to its members?

2 A I believe so, yes.

3 Q And does Mr. Vrooman know that you're here
4 today?

5 A He does.

6 Q Who asked you to participate in this matter
7 as an expert?

8 A I believe that was Ben -- a coworker, Ben
9 Erwin.

10 Q He's the general counsel?

11 A Assistant general counsel.

12 Q Assistant. I'm sorry.

13 How many times have you worked with the
14 lawyers at Bradley Arant?

15 A I believe this is the second time, with the
16 Kolbe case being the first.

17 Q Do you know if they asked you or asked your
18 boss for you to participate in this case as an expert?

19 A I would assume they had gone through our
20 government relations department prior.

21 Q Have you ever worked on a case on behalf of

1 Q And is it fair to say that you started with
2 the Maryland report as a draft and then updated with
3 more recent numbers?

4 A Correct.

5 Q Was that report in Kolbe accurate to the
6 best of your ability?

7 A I believe it was, yes.

8 Q Let's go back to Exhibit 2, which is the
9 report in this case.

10 A Okay.

11 Q On the second to last page, you state that
12 it is your opinion that:

13 "Both modern sporting rifles and magazines
14 that are capable of holding more than ten rounds of
15 ammunition are commonly used by millions of law abiding
16 Americans for a variety of lawful purposes."

17 Is that your opinion?

18 A Yes.

19 Q What do you mean when you use the term
20 "modern sporting rifle"?

21 A Modern sporting rifle is a category of

1 semi-automatic rifles built, primarily built, on an AR
2 or AK platform capable of accepting a detachable
3 magazine.

4 Q Is an M16 included in a modern sporting
5 rifle, if you know?

6 A M16? Is an M16 included in a modern
7 sporting rifle?

8 Q Would it be a modern sporting rifle?

9 A Would it be a modern sporting rifle?
10 I believe M16 is fully automatic. So, therefore, it
11 would not be a modern sporting rifle.

12 Q What if an M16 was being operated in
13 semi-automatic mode? Would it be a modern sporting
14 rifle then?

15 A If it has the capability to shoot fully
16 automatic, it would not be considered a modern sporting
17 rifle.

18 Q So is it your testimony that any rifle that
19 can be shot in fully-automatic mode is not a modern
20 sporting rifle?

21 A Just to clarify, you said "any rifle that

1 to other guns for these particular purposes, does it?

2 A I don't believe it does.

3 Q And, in fact, we talked earlier about the
4 use of other guns for target shooting purposes;
5 correct?

6 A Correct.

7 Q And for hunting purposes; correct?

8 A Yes.

9 Q And other guns are, in fact, more commonly
10 used for those purposes based upon the Sport Shooting
11 Participation Survey; correct?

12 A I believe you're referring to Exhibit D,
13 the Sport Shooting Participation Study where 14 million
14 people participated in target shooting with the modern
15 sporting rifle?

16 Q Yes.

17 A And then 33 million participated with a
18 handgun and 28 million with a traditional rifle?

19 Q Yes.

20 A Yes. That would be correct.

21 Q And, again, going back to the Modern

1 Sporting Rifle Consumer Report 2013, another conclusion
2 that you drew from this report, in your expert
3 report -- and I apologize for the jumping back and
4 forth, but we do what we have to do.

5 So toward the very end of that paragraph
6 number two --

7 A Okay.

8 Q -- you say that:

9 "Combining data from this report..."

10 -- meaning the Comprehensive Consumer
11 Report -- "...with production and import data from the
12 ATF AFMER and ITC, we can apply a weighted average
13 formula showing more than 4.8 million people currently
14 own one or more modern sport rifles."

15 Did I read that correctly?

16 A Yes.

17 Q Can you walk me through how you arrived at
18 that number -- 4.8 million people currently own one or
19 more of the modern sporting rifles.

20 A Sure. And I believe this was a topic in
21 the last deposition as well -- or, the Kolbe

1 deposition.

2 Q That's true. That's correct.

3 Would you like to refer to the deposition
4 testimony in Kolbe on this topic?

5 A Sure.

6 Q It's at Pages 177 to 180.

7 A So nothing has changed. That number didn't
8 get changed because we hadn't updated the modern
9 sporting rifle study, so we kept it at the same
10 4.8 million.

11 Q So, just to clarify, when you say "nothing
12 has changed," do you mean nothing has changed from what
13 I believe is Exhibit 6, which is your expert report in
14 the Kolbe deposition; is that right?

15 A Right. And further defining, nothing has
16 changed with regard to the 4.8 million people currently
17 owning one or more modern sporting rifle. We have not
18 updated that number for this case.

19 Q Understood. So, in that case -- if you
20 just give me a moment, we may be able to just refer to
21 the testimony in Kolbe on this topic. Well, I think

1 the easiest thing to do is to basically summarize what
2 you've done here.

3 And that is: Did you go back to your --
4 the first paragraph, numbered paragraph 1, in your
5 expert report? Actually, don't even -- let me withdraw
6 that.

7 If you go to the chart that you've attached
8 at Tab A, you have approximately 13.7 million modern
9 sporting rifles derived from the US production less
10 exports and the US imports less exports; is that
11 correct?

12 A That is correct from 1990 to 2015. I
13 believe, during the Kolbe case -- referring back to the
14 deposition on Page 1 -- Page 181, Line 9, the number
15 was 8.2. That was used as part of the calculation
16 8.2 million modern sporting rifles were available and
17 the calculation to get how many individual owners, the
18 4.8 millions, as referenced in this Section 2 of the
19 expert report Exhibit 2.

20 Q So when you determined your weighted
21 average for the expert report in this case, did you use

1 the 8.2 million figure that you had come up with for
2 the Kolbe case and then divided that by the weighted
3 average, or did you use the 13.7 million figure that
4 you appear to have come up with for purposes of this
5 case?

6 A Correct.

7 MR. PORTER: Object to the form of the
8 question.

9 But you can answer.

10 THE WITNESS: Okay. And that 4.8 million
11 number didn't change from the Kolbe case because we
12 didn't update the Modern Sporting Rifle Consumer '13
13 study even though Exhibit A -- the other chart updated.

14 So that 4.8 million people that currently
15 own one, if you were to use the same figures from the
16 modern sporting rifle study '13 and then use the
17 updated final total of 13.7 million modern sporting
18 rifles, you would have a much higher number than
19 4.8 million. But since we didn't have both pieces of
20 data, we kept them the same keeping the timelines the
21 same.

1 BY MS. KAPLAN:

2 Q So you used the total number of modern
3 sporting rifles that you've estimated from -- I believe
4 at that time you were looking at 2012 numbers and
5 divided it by the weighted average that you obtained
6 from the Modern Consumer Report -- or, the consumer
7 survey in 2013?

8 A That's how it was done. You had mentioned
9 "me" or you said "you," referring to me; but, actually,
10 I had that calculation done by a Ph.D. statistician to
11 confirm the best way of doing that.

12 Q And who was that person?

13 A That was Laura Kippin of Info Maniacs.
14 (Phonetic.)

15 Q When you say you had that done, did you pay
16 her to do that work?

17 A Not for that. She has done other studies
18 for us, but this was not something that I had paid to
19 do. I just asked her for assistance.

20 Q And sorry. Just to clarify, you hired her
21 to do other studies for you; is that right?

1 A Correct. None of which are exhibits here,
2 I believe.

3 Q And, in the Kolbe case, you had testified
4 that you used a weighted average approach where you
5 applied a certain percentage for people who had said
6 they owned one modern sporting rifle, a certain
7 percentage for people who said they owned two, and a
8 certain percentage for people who owned three or four
9 or more; is that correct?

10 MR. PORTER: Object to the form of the
11 question.

12 But you can answer. Go ahead.

13 THE WITNESS: That is the way it was
14 described to me that the calculation was done by Laura
15 Kippin.

16 BY MS. KAPLAN:

17 Q When she did that calculation -- well, let
18 me back up just one question.

19 The responses in the consumer survey that
20 led to that weighted average are in this report, and
21 pardon me for a second while I find them.

1 Yes, page 13. Thank you.

2 So in doing that calculation, she relied on
3 the data on Page 13; is that correct?

4 A Correct.

5 Q And when respondents answered the questions
6 that produced the data on Page 13, do you know if they
7 were given the option to answer the exact number of
8 guns they owned if they owned more than four guns?

9 A I do not recall.

10 Q You don't know the difference whether
11 someone who owned four guns -- well, so, for example,
12 if I was answering the survey and I owned ten guns, you
13 don't know whether there was an option to enter ten?

14 A Correct.

15 Q So do you agree that the average number of
16 guns owned would be different if the average took into
17 consideration the exact number of guns owned by people
18 who owned more than four guns?

19 A It would be very similar because the vast
20 majority, you know, have one, two, or three guns. The
21 number would still be in the millions. I mean...

1 Q Well, you said the vast majority own one,
2 two, or three guns; but it looks to me like in 2013,
3 27 percent of respondents owned four or more guns; is
4 that right?

5 A Correct. Which means that 73 percent,
6 which would be a majority, own either one, two, or
7 three.

8 Q So do you have any sense -- if 27 percent
9 of respondents owned ten or more guns, do you have any
10 sense of whether that would have any impact on your
11 average of number owned of 3.1?

12 A No. It's not something we really looked
13 into deeply because it doesn't affect our members.
14 They can use the information about the millions of gun
15 owners out there using them for multiple purposes.

16 Q And when Laura Kippin used the information
17 on Page 13 to calculate the number of modern sporting
18 rifle owners, do you know if she took into
19 consideration what might be going on with this
20 27 percent of respondents who own any number of guns
21 the minimum of which is four?

1 A No. To the best of my recollection, we
2 were just trying to get a good estimate of how many
3 were out there. So if the data didn't exist or if we
4 didn't look into how many owned four, five, six, seven
5 on upwards to however many, we didn't look into that.

6 Q Just a couple of other questions about this
7 report. If you turn to Page 9.

8 Is it fair to say that 99 percent of the
9 respondents to this survey about ownership of modern
10 sporting rifles were male?

11 A Correct.

12 Q Or I shouldn't say 99 percent of
13 respondents.

14 I should say 99 percent of owners of modern
15 sporting rifles were male based upon this survey; is
16 that correct?

17 A The first response may be more -- or, your
18 first terminology may be more correct. 99 percent of
19 the respondents that took this survey were male.

20 Q And if you turn to Page 15, this question
21 appears to have asked:

1 Which of the following did you purchase or
2 own previous to owning a modern sporting rifle?

3 Is that correct?

4 A Yes.

5 Q It appears that 99 percent of respondents
6 owned some other type of gun before they owned a modern
7 sporting rifle; is that correct?

8 A I'm not seeing where you're getting the
9 99 percent -- 90 percent of handguns and 82 percent of
10 rifle...

11 Q If you look at the very bottom where it
12 says:

13 Which of the following did you purchase or
14 own previous to owning a modern sporting rifle?

15 And at the bottom it says "none." For
16 every category, the response is one percent.

17 A Okay.

18 Q Does that suggest that only one percent of
19 responses had owned no other gun before they owned a
20 modern sporting rifle?

21 A Correct.

1 MR. PORTER: I object to the form of the
2 question. One of the categories is paintball gun,
3 which is not a firearm.

4 MS. KAPLAN: Fair enough.

5 BY MS. KAPLAN:

6 Q Why would a question like this include
7 paintball guns or BB air guns as possible guns that
8 were owned prior to owning a modern sporting rifle, if
9 you know?

10 A Sure. Some of our members, retailers
11 members, carry BB guns and air guns and paintball guns,
12 and that may be some relative information for them.

13 Q In any event, approximately 90 percent of
14 modern sporting rifle owners owned a handgun prior to
15 owning a modern sporting rifle; correct?

16 A Correct.

17 Q And 82 percent owned a traditional rifle
18 prior to owning a modern sporting rifle; is that
19 correct?

20 A Correct.

21 Q Turning to the Firearms Retailer Survey

1 membership?

2 A I believe we have. Not on a monthly basis
3 like we do the adjusted NICS data. That is just the
4 overall figures.

5 Q And the long guns aren't broken down as to
6 modern sporting rifles as compared to other long guns,
7 are they?

8 A I don't believe so.

9 Q So back when we were talking about the
10 Consumer Report Survey, we talked about the fact that
11 people were asked if they owned one, two, three, or
12 four or more modern sporting rifles; right?

13 A Correct.

14 Q But it appears, though I think you said you
15 weren't sure, that the survey did not ask exactly how
16 many modern sporting rifles were owned if it was a
17 number more than four; correct?

18 A Correct. Yeah, I would have to double
19 check with the questionnaire to see exactly how that
20 was asked.

21 Q But, in any event, that data wasn't

1 reported in the final report that was available to the
2 membership, was it? And it's on Page -- I want to look
3 at the page.

4 A I believe it's Page 13.

5 Q Yeah, I think that's right.

6 A That would be correct.

7 Q And the reason that the chart doesn't
8 breakdown the exact number of modern sporting rifles
9 owned if it's more than four is because that particular
10 information isn't necessary for the purposes of this
11 survey, is it?

12 A Correct. Our members can get a general
13 feel for the market by knowing what's posted here on
14 Page 13.

15 Q So the purpose of the survey is to give the
16 membership a general feel of the market; is that what
17 you're saying?

18 A The survey is to provide our members with
19 as much data that we can about a specific topic.

20 Q But it's to be used for marketing and sales
21 purposes; is that fair to say?

1 A It can be used for whatever purposes the
2 member deems necessary.

3 Q But it's for the members to use, in any
4 event?

5 A Correct.

6 Q And that's also true of the Firearms
7 Retailers Survey; correct? That the purpose of the
8 survey is to be of benefit to the members; right?

9 A That's one of the purposes, yes.

10 Q Is that why you don't require them to
11 answer the survey based upon exact sales data?

12 A They can answer the survey using exact
13 sales data if they wanted to.

14 Q But what you're asking them to provide is
15 just a general picture of their overall sales; is that
16 correct?

17 A We ask them, you know, their opinion on
18 topics relating to sales as well as relating to
19 customers.

20 Q For the purpose of giving them an idea
21 about market trends; right?

1 A Correct.

2 Q Are you aware of any specific instances in
3 which a modern sporting rifle was used in home or
4 self-defense?

5 A Specific examples, no.

6 Q Are you aware of any specific examples in
7 which a fully-automatic rifle such as the M16 was used
8 in home or self-defense?

9 MR. PORTER: Object to the form of the
10 question.

11 But you can answer.

12 THE WITNESS: No, I'm not aware.

13 BY MS. KAPLAN:

14 Q Are you aware of any examples in which an
15 AK platform rifle with a fully-automatic mode was used
16 in home or self-defense?

17 MR. PORTER: Object to the form of the
18 question.

19 But you can answer.

20 THE WITNESS: No.

21 BY MS. KAPLAN:

1 Q I apologize if I asked you this already.

2 But, to your knowledge, has the NSSF ever
3 commissioned a study to determine whether modern
4 sporting rifles have been used in home or self-defense?

5 A Well, the Modern Sporting Rifles Consumer
6 Study, as an exhibit here, does ask if they used it for
7 home defense, however, not specific examples. That's
8 not data that we need to ask.

9 Q It asks about whether home defense might be
10 a purpose for which someone might own a modern sporting
11 rifle; correct?

12 A I believe it was reasons for owning.

13 Q But not about specific instances; correct?

14 A Correct.

15 Q Are you aware of any specific instances in
16 which a magazine containing more than ten rounds was
17 used in home or self-defense?

18 A No.

19 Q Has NSSF ever commissioned a study
20 regarding the use of magazines with more than ten
21 rounds for self-defense purposes?

1 A No.

2 Q Are you familiar with devices that allow an
3 otherwise semi-automatic firearm to fire more rapidly
4 than a human being can pull the trigger?

5 MR. PORTER: Object to the form of the
6 question.

7 But you can answer.

8 BY MS. KAPLAN:

9 Q I'll back that up one step.
10 Are you aware that such devices exist?

11 A I'm aware but not familiar with.

12 Q Have you ever heard of something called a
13 bump stock?

14 A I have heard of a bump stock.

15 Q What's your understanding of a bump stock?

16 A I've actually not ever seen one or used
17 one, but my understanding is they will allow a firearm
18 to fire a little quicker than if it wasn't on that
19 firearm. But, again, I don't know if that's true not
20 having used one.

21 Q Are you aware that there are other devices

1 with other names that perform a similar function?

2 MR. PORTER: Object to the form of the
3 question.

4 But you can answer.

5 THE WITNESS: I am not familiar with...

6 BY MS. KAPLAN:

7 Q To your knowledge, has NSSF ever
8 commissioned a study that asked whether owners of
9 modern sporting rifles owned a bump stock?

10 A Not to my knowledge. We have not.

11 Q Are you aware that owners of rifles such as
12 AR platform rifles can be modified to fire in
13 full-automatic mode?

14 MR. PORTER: Objection to the form of the
15 question.

16 But you can answer if you know the answer
17 to that.

18 THE WITNESS: I'm not aware of any specific
19 examples of that.

20 BY MS. KAPLAN:

21 Q Has NSSF ever commissioned a study that

1 asked whether owners of AR platform rifles had ever
2 tried to modify their rifles for fully-automatic fire?

3 A I'm not aware of any such study.

4 Q Has NSSF ever commissioned a study that
5 asked respondents about the use of modern shooting
6 rifles for nonlegal purposes?

7 A For nonlegal purposes, did you ask?

8 Q Yes.

9 A No, we have not.

10 Q Like mass shootings?

11 MR. PORTER: Object to the form of the
12 question. He already said they haven't commissioned
13 any studies associated with nonlegal purposes.

14 BY MS. KAPLAN:

15 Q Are you planning to offer any expert
16 testimony in this case other than what is set forth in
17 your report?

18 A I have no plans to.

19 Q If you could turn to Page 119 of the
20 transcript in the Kolbe deposition. If you could read
21 from Page 119, Line 19 to 121, Line 10, please.

1 District of Columbia, to wit:

2 I, Melinda Johnson, CSR, a Notary Public of
3 the District of Columbia, do hereby certify that the
4 within-named witness personally appeared before me at
5 the time and place herein set out, and after having
6 been duly sworn by me, according to law, was examined
7 by counsel.

8 I further certify that the examination was
9 recorded stenographically by me and this transcript is
10 a true record of the proceedings.

11 I further certify that I am not of counsel
12 to any of the parties, nor in any way interested in the
13 outcome of this action.

14 As witness my hand 21st day of
15 November, 2017.

16  _____

17
18 Melinda Johnson, CSR
19 Notary Public

20 My Commission Expires:
21 February 14, 2022

EXHIBIT 4
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

David Seth Worman
Vol. I
September 15, 2017



DORIS O. WONG
ASSOCIATES, INC.

C O U R T R E P O R T E R S

50 Franklin St., Boston, MA 02110
Phone (617) 426-2432

Original File WORMAN_David.txt
Min-U-Script® with Word Index

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Volume I
Pages 1 to 33
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF DAVID SETH WORMAN, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Ken A. DiFraia, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Office of the Attorney
General, 100 Cambridge Street, Boston,
Massachusetts, on Friday, September 15, 2017,
commencing at 9:45 a.m.

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PRESENT:

Bradley Arant Boult Cummings LLP
(by James W. Porter, III, Esq., and Connor
Blair, Esq.)
One Federal Place, 1819 Fifth Avenue North,
Birmingham, AL 35203-2119,
jporter@bradley.com;
cblair@bradley.com
205.521.8285
for the Plaintiffs.

Office of the Attorney General
(by Julia Kobick, Assistant Attorney
General)
One Ashburton Place, 18th Floor,
Boston, MA 02108,
Julia.Kobick@state.ma.us
617.963.2567
for the Defendants.

* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DAVID SETH WORMAN				
BY MS. KOBICK	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of response to social media posting, prepared by David Seth Worman, Bates No. WORMAN-000034	15
Exhibit 2	Copy of response to social media posting, prepared by David Seth Worman, Bates No. WORMAN-000036	16
Exhibit 3	Copy of response to social media posting, prepared by David Seth Worman, Bates No. WORMAN-000049	17

* * * *

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4

1 P R O C E E D I N G S

2 DAVID SETH WORMAN

3 a witness called for examination by counsel for the
4 Defendants, having been satisfactorily identified by
5 the production of his passport and being first duly
6 sworn by the Notary Public, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. KOBICK:

10 Q. Good morning. I'm Julia Kobick. I'm an
11 Assistant Attorney General, and I represent the
12 Defendants in this case, Worman versus Baker, at al.

13 Could you state your name and home [REDACTED]ress
14 for the record.

15 A. David Seth Worman, [REDACTED]
[REDACTED]

17 Q. Could you state your place of work and the
18 address there.

19 A. Orthopedic Care Physician Network, and it's
20 15 Roche Brothers Way, North Easton, Massachusetts
21 02356.

22 MS. KOBICK: Before we begin, I would like
23 to confirm that the deposition is being conducted
24 pursuant to the Federal Rule of Civil Procedure 30.

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5

1 MR. PORTER: Yes.

2 Q. Dr. Worman, have you ever been deposed
3 before?

4 A. Yes.

5 Q. Could you tell me when and the names of the
6 cases, please.

7 A. I don't know the names of the cases. One
8 happened sometime between 1998 and 2003, when I was
9 a resident in Miami. One was last year, in which I
10 was just deposed as a witness in a medical
11 malpractice case.

12 Q. Were you an expert witness or a fact
13 witness?

14 A. A fact witness.

15 Q. And the one between 1998 and 2003, was that
16 also a medical malpractice case?

17 A. I think it was.

18 Q. Were you an expert witness or a fact
19 witness?

20 A. Fact witness.

21 Q. You may be familiar with some of these
22 ground rules, but I'm going to run through them so
23 that you are familiar with how depositions go.

24 If I ask you a question that is unclear to

David Seth Worman - Vol. I - September 15, 2017

6

1 you, please ask me to clarify, and I will clarify
2 for you.

3 A. Sure.

4 Q. If you don't seek clarification, I will
5 assume you understood the question. Does that make
6 sense?

7 A. Yes.

8 Q. Please wait for me to finish my question
9 before you answer.

10 Please answer the questions orally. If you
11 nod your head or gesture, the court reporter can't
12 take down your answer appropriately.

13 A. Sure.

14 Q. If your attorney objects, please wait for
15 him to finish his objection, and then he will tell
16 you whether to answer or not. Does that make sense?

17 A. Yes.

18 Q. If you need a break at any time, feel free
19 to ask for one.

20 You understand that you are under oath?

21 A. Yes.

22 Q. Did you tell me where you work now?

23 A. Yes. I gave you the address. My practice
24 is based out of North Easton, Massachusetts.

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7

1 Q. You are a physician?

2 A. Yes, I am.

3 Q. What kind of doctor are you?

4 A. Orthopedic surgeon.

5 Q. How long have you been employed as an
6 orthopedic surgeon?

7 A. I started at my current practice in 2003.

8 Q. Where did you work before then?

9 A. I was a resident at University of Miami.

10 Q. How long was your residency?

11 A. Five years.

12 Q. So 1998 to --

13 A. Yes, to 2003.

14 Q. What did you do before you were a resident?

15 A. I was a medical student.

16 Q. Where were you in medical school?

17 A. At University of Florida, from '94 to '98.

18 Q. Do you have any other employment besides
19 being a resident and a physician?

20 A. No.

21 Q. You mentioned you were in medical school.
22 Could you walk me through your educational
23 background, where you went to college.

24 A. Sure. I went to college at Emory

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8

1 University in Atlanta from 1991 to 1994. I then
2 went to medical school.

3 Q. You've never been employed as a law
4 enforcement officer?

5 A. No.

6 Q. Do you have any military service?

7 A. No.

8 Q. Have you ever been tried or convicted of a
9 crime?

10 A. No.

11 Q. Have you ever been involved on either side
12 of a domestic violence incident?

13 A. No.

14 Q. How long have you lived in Massachusetts?

15 A. Since 2003.

16 Q. Do you have a gun license, Dr. Worman?

17 A. Yes.

18 Q. What kind?

19 A. I thought there was only one available now
20 in Massachusetts, the unrestricted LTC.

21 Q. Who issued you your license to carry?

22 A. [REDACTED].

23 Q. When was it issued?

24 A. I don't know the date, somewhere in the

David Seth Worman - Vol. I - September 15, 2017

9

1 last two to three years.

2 Q. Was that a renewal of a previous LTC or was
3 that the first time?

4 A. That was my first time.

5 Q. Your license has never been suspended or
6 revoked?

7 A. No.

8 Q. Do you have any other gun license, as a
9 dealer or anything like that?

10 A. No.

11 Q. Have you taken any gun safety training
12 classes?

13 A. Yes.

14 Q. Could you list them for me.

15 A. Gosh... So the first class I took was the
16 required class in order to get the license. I have
17 trained in martial arts, Krav Maga, in which we do
18 gun safety training in that, and I've been doing
19 that for nine years. I have taken multiple courses
20 at the SIG Sauer Academy in New Hampshire.

21 Q. Let's go back to the first class. You said
22 it was the required class for the LTC?

23 A. Yes.

24 Q. Do you remember the name of that class?

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10

1 A. No.

2 Q. Do you remember about when you took it?

3 A. No. It was the year I got my license.

4 Q. Do you remember who offered it?

5 A. It was through Mass. Firearms School.

6 Q. What topics did they cover?

7 A. I remember they covered gun safety and some
8 of the laws of self-defense, I believe. Then we did
9 a live firing section. I don't remember all the
10 details of everything that was covered in that
11 class, though.

12 Q. Do you remember what guns you shot in the
13 live firing session?

14 A. No.

15 Q. Do you remember if they were handguns or
16 rifles or shotguns?

17 A. Handguns.

18 Q. And then you said you've been doing the
19 martial arts academy for nine years?

20 A. Yes.

21 Q. What types of gun safety education does
22 those classes provide?

23 A. We do both gun defense, defense against
24 people with guns against us. Then we do dry

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11

1 firearms training that involves safe handling and
2 manipulation of firearms, how to clear, how to
3 store, how to handle a gun in a safe manner.

4 Q. Is it focused on handguns or rifles and
5 shotguns as well?

6 A. It's everything.

7 Q. Then the SIG Sauer Academy, tell me what
8 that course is focused on.

9 A. So I have done several pistol courses from
10 basic to intermediate to advanced, pistol craft. I
11 have done two semiautomatic rifle courses there. I
12 have done a civilian active shooter response course.
13 I have done a civilian -- what's called a
14 "simunition course."

15 Q. Could you elaborate on that.

16 A. Yes. Simunition is basically dummy rounds.
17 It's basically paint guns where you will simulate
18 real life scenarios to practice reactions.

19 Q. Do the pistol and semiautomatic rifle
20 courses discuss safe handling and storage?

21 A. Absolutely.

22 Q. Have you ever participated as a trainer in
23 a firearms course?

24 A. No.

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12

1 Q. And there are no other gun courses that you
2 have taken that you are aware of?

3 A. No. I don't know all the details of all
4 the ones I have taken at SIG Sauer. There haven't
5 been that many, maybe a half dozen to ten.

6 Q. You said that's in New Hampshire?

7 A. Yes.

8 Q. Are you familiar with the Gun Owners'
9 Action League?

10 A. Yes.

11 Q. If I use the acronym "GOAL" to refer to
12 them, will you understand that?

13 A. Yes.

14 Q. Are you a member of GOAL?

15 A. Yes.

16 Q. What does membership entail?

17 A. I pay dues and that's about it. I get a
18 newsletter.

19 Q. Are you familiar with Commonwealth Second
20 Amendment?

21 A. Not particularly. I have heard of them.

22 Q. You are not a member of Commonwealth Second
23 Amendment?

24 A. No.

David Seth Worman - Vol. I - September 15, 2017

13

1 Q. Are you familiar with the National Rifle
2 Association?

3 A. Yes.

4 Q. Are you a member of that organization?

5 A. I believe I am. I've been before. I don't
6 know if my membership is currently active. I think
7 it is.

8 Q. Are you a member of any gun clubs?

9 A. Yes.

10 Q. Which ones?

11 A. [REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED].

14 Q. Are those the only two?

15 A. Yes.

16 Q. Just returning back to GOAL, have you ever
17 participated in any GOAL-sponsored-activities?

18 A. No.

19 Q. And the National Rifle Association, if I
20 use the acronym "NRA," will you understand that?

21 A. Yes.

22 Q. Do you participate in any NRA-sponsored
23 activities?

24 A. No.

David Seth Worman - Vol. I - September 15, 2017

14

1 Q. Just to confirm, you have not been employed
2 by either GOAL or the NRA?

3 A. No.

4 Q. Do you have a Facebook account?

5 A. Yes.

6 Q. Do you have a Twitter account?

7 A. No.

8 Q. Have you ever posted about guns on your
9 Facebook account?

10 A. Yes.

11 Q. Have you expressed opinions about this case
12 on your Facebook account?

13 A. I don't know.

14 Q. As part of your membership in GOAL, can you
15 post on GOAL's website?

16 A. No, not that I know of.

17 Q. Have you ever posted in response to any
18 GOAL articles or blog posts on line?

19 A. On Facebook probably.

20 Q. Do you know if you posted anything related
21 to a GOAL article about this case?

22 A. I believe I have, but I can't recall
23 specifically.

24 Q. Are you familiar with the Enforcement

David Seth Worman - Vol. I - September 15, 2017

15

1 Notice issued by the Attorney General's Office on
2 July 20, 2016?

3 A. Yes.

4 Q. Have you posted about that Enforcement
5 Notice on your Facebook account?

6 A. I don't know.

7 Q. I'm going to give you a document. It's
8 labeled Worman-000034.

9 (Document marked as Worman
10 Exhibit 1 for identification)

11 A. (Examines document) Yes.

12 Q. Are you familiar with this document?

13 A. No.

14 Q. Do you recognize those words as your words?

15 A. I don't recall writing them, but they
16 definitely could be.

17 Q. Did you work with your attorneys to produce
18 documents that were responsive to the Defendants'
19 requests for documents?

20 A. Yes.

21 Q. Do you recognize this as one of the
22 documents that was produced to the Defendants?

23 A. I don't.

24 Q. Can you look at the upper left-hand corner

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16

1 of this page and read me what it says in the upper
2 left.

3 A. "David Worman commented on David Webb's
4 post."

5 Q. Could you read the date, please.

6 A. March 24, 2017.

7 Q. Having read that, you still do not
8 recognize these as your words?

9 A. I don't remember writing these comments,
10 but I believe that they are mine. I don't dispute
11 that.

12 Q. I'm going to give you another document to
13 review.

14 (Document marked as Worman
15 Exhibit 2 for identification)

16 MS. KOBICK: For the record, that's labeled
17 at the bottom Worman-000036.

18 Q. Please take your time to review Exhibit 2.

19 A. (Examines document) Okay.

20 Q. Are you familiar with this document?

21 A. No, I'm not familiar with it.

22 Q. Do you recognize this as your words?

23 A. Yes.

24 Q. I'll give you one additional document.

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1 It's labeled Worman-000049.

2 (Document marked as Worman
3 Exhibit 3 for identification)

4 Q. Please take your time to review it.

5 A. (Examines document) Okay.

6 Q. Do you recognize those as your words?

7 A. I don't remember writing them, but I don't
8 dispute that they are mine.

9 Q. Thank you. How did you hear about this
10 case?

11 A. Through the GOAL Facebook page.

12 Q. Did you see a posting about the case?

13 A. I believe so.

14 Q. What did you do after you saw that posting?

15 A. I emailed the person that they said to
16 email.

17 Q. Do you remember the name of the person that
18 you emailed?

19 A. No.

20 Q. Did they invite you to participate and
21 there was an ongoing discussion about that?

22 A. That's not how it happened.

23 Q. How did it happen?

24 A. I e-mailed the -- I don't know who I

David Seth Worman - Vol. I - September 15, 2017

18

1 e-mailed. It said to email this person. I emailed
2 them saying I was interested in being a plaintiff in
3 the case. Then someone later contacted me and
4 interviewed me.

5 Q. Are you compensating your lawyers in this
6 case?

7 A. Am I directly?

8 Q. Yes.

9	A.	No.
---	----	-----

10 Q. Dr. Worman, do you own any guns?

11	A. Yes.
----	---------

Row	Bar Length (approx. % of total width)
1	10
2	80
3	100
4	45
5	60
6	15
7	90
8	65
9	60
10	10
11	75
12	95

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[illegible]

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[illegible]

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[illegible]

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[illegible]

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[illegible]

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Row	Bar Length (approx. % of total width)
1	80
2	90
3	5
4	95
5	30
6	55
7	40
8	90
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12	100
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19	15
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[illegible]

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Rank	Country	Percentage
1	United States	25%
2	Germany	15%
3	France	12%
4	United Kingdom	10%
5	Italy	8%
6	Spain	7%
7	Japan	6%
8	Canada	5%
9	Sweden	4%
10	Netherlands	3%
11	Belgium	2%
12	Australia	1%
13	South Korea	1%
14	India	1%
15	China	1%
16	Brazil	1%
17	India	1%
18	China	1%
19	United States	1%
20	Germany	1%
21	France	1%
22	United Kingdom	1%
23	Italy	1%
24	Spain	1%
25	Japan	1%
26	Canada	1%
27	Sweden	1%
28	Netherlands	1%
29	Belgium	1%
30	Australia	1%
31	South Korea	1%
32	India	1%
33	China	1%
34	Brazil	1%
35	India	1%
36	China	1%
37	United States	1%
38	Germany	1%
39	France	1%
40	United Kingdom	1%
41	Italy	1%
42	Spain	1%
43	Japan	1%
44	Canada	1%
45	Sweden	1%
46	Netherlands	1%
47	Belgium	1%
48	Australia	1%
49	South Korea	1%
50	India	1%
51	China	1%
52	Brazil	1%
53	India	1%
54	China	1%
55	United States	1%
56	Germany	1%
57	France	1%
58	United Kingdom	1%
59	Italy	1%
60	Spain	1%
61	Japan	1%
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65	Belgium	1%
66	Australia	1%
67	South Korea	1%
68	India	1%
69	China	1%
70	Brazil	1%
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72	China	1%
73	United States	1%
74	Germany	1%
75	France	1%
76	United Kingdom	1%
77	Italy	1%
78	Spain	1%
79	Japan	1%
80	Canada	1%
81	Sweden	1%
82	Netherlands	1%
83	Belgium	1%
84	Australia	1%
85	South Korea	1%
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87	China	1%
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100	Netherlands	1%

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Q. Can you tell me why you are participating as a plaintiff in this lawsuit.

A. Yes. So I think the first reason is that I'm a law-abiding citizen, and I've been living here and, I thought, doing everything right and following all the laws. Suddenly on July 20th, Maura Healey, without any notice, put something in the paper that told me that I was a criminal. She leaves me in a situation where -- even in her own words in that Enforcement Notice, she says that she's not going to prosecute us now but that she can change her mind at some time. I don't know where my standing is in terms of what my legal status is. I know I have done what I consider everything right. She put me in a position where I feel I'm criminalized. I know I represent a large class of people that I trained with and that I shoot with and spent time with, and they all feel the same way. We don't know what's

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1 going to happen in the future. We feel criminalized
2 right now. That's one thing.

3 Then I think that the assault weapons ban
4 in general, the way it's now interpreted, is a
5 violation of my civil rights. I feel like I'm
6 standing up for my own civil rights.

7 Q. What do you hope to achieve in the lawsuit?

8 A. Restoration of my civil rights.

9 MS. KOBICK: I think that's all I have.

10 MR. PORTER: No questions.

11 (Whereupon the deposition
12 was concluded at 10:25 a.m.)
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C E R T I F I C A T E

I, DAVID SETH WORMAN, do hereby certify that I have read the foregoing transcript of my testimony, and further certify under the pains and penalties of perjury that said transcript (with/without) suggested corrections is a true and accurate record of said testimony.

Dated at _____, this ____ day of _____, 2017.

David Seth Worman - Vol. I - September 15, 2017

31

SUGGESTED CORRECTIONS

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

WITNESS: David Seth Worman, Vol. I

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
------	------	-------------	--------

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32

1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 15th day of
6 September, 2017, at 9:45 a.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 29th day of
21 September, 2017.

22

23

24

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33

Under Federal Rule 30:

X Reading and Signing was requested

Reading and Signing was waived

Reading and Signing was not requested

Ken A. DiFraia

Notary Public

Commission expires 2/24/2023

David Seth Worman - Vol. I - September 15, 2017

D I S C L A I M E R

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EXHIBIT 5
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

Anthony L. Linden
Vol. I
September 12, 2017



DORIS O. WONG
ASSOCIATES, INC.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF ANTHONY L. LINDEN, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Ken A. DiFraia, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Office of the Attorney
General, 100 Cambridge Street, Boston,
Massachusetts, on Tuesday, September 12, 2017,
commencing at 2:12 p.m.

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PRESENT:

Bradley Arant Boult Cummings LLP
(by James W. Porter, III, Esq., and Connor
Blair, Esq.)
One Federal Place, 1819 Fifth Avenue North,
Birmingham, AL 35203-2119,
jporter@bradley.com;
cblair@bradley.com
205.521.8285
for the Plaintiffs.

Campbell Campbell Edwards & Conroy, P.C.
(by Christopher Howe, Esq.)
One Constitution Plaza, Boston, MA 02129,
chowe@campbell-trial-lawyers.com
617.241.3029
for the Plaintiff Gun Owners' Action
League, Inc.

Office of the Attorney General
(by Gary Klein, Assistant Attorney General;
Elizabeth Kaplan, Assistant Attorney
General)
One Ashburton Place, 18th Floor,
Boston, MA 02108,
Gary.Klein@state.ma.us;
Elizabeth.Kaplan@state.ma.us;
617.963.2567
for the Defendants.

* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ANTHONY L. LINDEN				
BY MR. KLEIN	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of email to Anthony Linden from Gun Owners' Action League dated October 21, 2016	30

* * * *

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1 P R O C E E D I N G S

2 ANTHONY L. LINDEN

3 a witness called for examination by counsel for the
4 Defendants, having been satisfactorily identified by
5 the production of his driver's license and being
6 first duly sworn by the Notary Public, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KLEIN:

10 Q. Good afternoon, Mr. Linden. Could you
11 please state your full name, spelling your last
12 name, your home address and any business address for
13 the record, please.

14 A. Sure. Anthony Lee Linden, L-i-n-d-e-n,
15 residing at [REDACTED]

17 Q. Do you have a business address?

18 A. I'm unemployed.

19 Q. Thank you. My name is Gary Klein. I'm one
20 of the attorneys for the defendants in this matter.
21 This is a matter that you are a plaintiff in called
22 "Worman versus Baker." Are you familiar with that
23 case?

24 A. Yes.

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1 Q. Have you ever had your deposition taken
2 before?

3 A. No.

4 Q. I'm going to spend a few minutes going
5 through some of the ground rules just so you
6 understand how the process will work. Then we will
7 ask you questions, and you will be obligated to
8 respond truthfully to those questions, okay?

9 A. Uh-huh.

10 Q. First of all, it's important that you
11 answer the questions verbally. The court reporter
12 can't take down nods of the head, shakes of the head
13 or "uh-huh."

14 A. Understood.

15 Q. Sometimes it's even hard for him to hear
16 when you say "uh-huh" so it's just better to answer
17 verbally.

18 A. Thank you.

19 Q. If I ask you a question that is unclear, I
20 want you to ask me to clarify it. If you don't ask
21 me to clarify and you answer, I'll assume that you
22 understood it.

23 A. Okay.

24 Q. I want you to wait for all questions to be

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1 completed. I don't want to be talking over each
2 other. That's to give the court reporter the
3 opportunity to take down all the questions and the
4 answers accurately.

5 A. Okay.

6 Q. Now, there may be some questions that your
7 attorney objects to. At the end of his objection,
8 he will either instruct you to go forward and answer
9 or instruct you not to answer. You should listen to
10 his instructions if he's making an objection before
11 you answer.

12 A. Okay.

13 Q. If you need a break at any time, we can
14 take a break, providing there's no question that's
15 already been asked that you need to answer, okay?

16 A. Okay.

17 Q. You understand that you are under oath
18 today, right?

19 A. Yes.

20 Q. And that means that you are obligated to
21 answer all my questions truthfully, right?

22 A. Correct.

23 Q. You also understand this deposition is
24 being taken under the penalty of perjury, correct?

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1 A. Yes.

2 Q. Thank you.

3 MR. KLEIN: I want to confirm on the
4 record, as we did earlier, that this deposition is
5 being taken pursuant to the Federal Rules, in
6 particular the portions of Rule 30 that apply to use
7 and objections in the context of the deposition.

8 MR. PORTER: Subject to all counsel's
9 approval, that's fine.

10 MR. HOWE: Yes.

11 MR. KLEIN: I assume you would like
12 Mr. Linden to read and sign and correct the
13 transcript as appropriate?

14 MR. HOWE: Yes.

15 MR. PORTER: Yes, we would.

16 Q. Mr. Linden, you just said you are not
17 currently employed. How long have you been
18 unemployed?

19 A. Since the beginning of April, I believe
20 April 10th.

21 Q. Where were you employed before that?

22 A. Prysmian Group, P-r-y-s-m-i-a-n. It's an
23 international manufacturer of power cables.

24 Q. How long were you employed there?

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1 A. Six and a half years.

2 Q. What were your duties there?

3 A. Quality control inspector.

4 Q. You were inspecting cable?

5 A. Verifying conformity before being shipped
6 to customers.

7 Q. Thank you. What would you say your field
8 is generally?

9 A. Clarify.

10 Q. What field of work do you consider where
11 you are most likely to obtain employment?

12 A. I'm in the process of transition. I can't
13 guarantee or really control where I end up at this
14 point.

15 Q. That's fine. Have you ever had any jobs in
16 the gun industry of any kind? Let's start with paid
17 work if that helps clarify the question.

18 A. No.

19 Q. Have you done any volunteer work that you
20 would consider relevant to the gun industry?

21 A. Yes.

22 Q. What kind of work?

23 A. For friends and family, I have done some
24 private firearms instruction. This was not paid.

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1 Q. Was that a formal process that you would do
2 the instruction or just upon request and because you
3 know the answers?

4 A. A combination of both. Friends and family
5 of mine are aware of where I stand on the Second
6 Amendment, as well as my enjoyment of hunting and
7 recreational shooting. I'm sometimes approached by
8 friends or friends of friends who know that and are
9 looking for assistance in learning about the safe
10 handling of firearms. I'm a certified instructor so
11 I am qualified to provide that instruction. I have
12 never yet charged anyone for those services.

13 Q. Do you have a formal course of instruction
14 that you provide people that ask for it?

15 A. It's a scaled down version of two different
16 NRA training programs.

17 Q. Which are which programs?

18 A. The Home Firearms Safety Course and Basic
19 Pistol.

20 Q. Have you ever provided any training with
21 regard to long guns? I should ask you a
22 foundational question. I'll take that question
23 back. Are you familiar with what a long gun is?

24 A. Yes.

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1 Q. What is your understanding?

2 A. A long gun is a firearm with a barrel, is
3 of a certain length to classify it something other
4 than a pistol or any other weapon.

5 Q. Would a rifle be a long gun?

6 A. Good question.

7 Q. Most of the time?

8 A. Generally speaking, yes.

9 Q. Would a shotgun be a long gun most of the
10 time?

11 A. (Witness shrugs)

12 MR. PORTER: You have to answer verbally,
13 if you know, if you can answer.

14 A. There are a very wide variety of rifles and
15 shotguns available that fall under various
16 classifications. Traditionally it's understood for
17 a shotgun to be a long gun, but that doesn't fit
18 every instance. I can't give you a definite
19 answering one way or another.

20 Q. Thank you. Have you ever done any training
21 programs related to long guns?

22 A. Only among my immediate family. These were
23 casual settings, not formal instructor sessions. It
24 was me taking my son and one of his friends to the

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1 shooting range and shooting, offering very basic
2 instructions on safe handling and marksmanship.
3 That was the extent of any instructions that I have
4 given on long guns.

5 Q. When you do that, it's in the context of
6 live fire at the range?

7 A. Yes. It's at the firearm range, and it's
8 live fire after going through an initial safety
9 briefing.

10 Q. Is that true of most of the training
11 sessions that you have done?

12 A. Always. It's always at an approved range
13 and following a safety briefing by me.

14 Q. Do you have any training materials that you
15 use when you do the trainings?

16 A. I do.

17 Q. What kind of materials?

18 A. Materials provided by the NRA.

19 Q. You mentioned in the course of your answer
20 earlier that people know your views on the Second
21 Amendment. Could you describe briefly what those
22 views are.

23 A. Briefly...

24 Q. Take as much time as you need.

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1 MR. PORTER: Briefly will be fine.

2 A. I can be a longwinded person. I'm just
3 trying to be concise.

4 I am thankful that the Constitution
5 provides certain freedoms to its citizens. I
6 believe that the Second Amendment is an important
7 part of some of those liberties that we are afforded
8 by the Constitution. I am glad to exercise that
9 right in a safe and responsible manner. I'm also
10 very glad and eager upon request to discuss that
11 further with anyone that wishes to talk about it.

12 Q. What is your view of what the Second
13 Amendment protects?

14 A. It protects the right of individual
15 citizens to keep and use for lawful purposes firearms.

16 Q. Does that include any firearm, as far as
17 you are concerned?

18 A. Are you asking for my personal opinion on
19 interpretation of the law?

20 Q. I'm asking for your views about the Second
21 Amendment. You stated that it protects the right to
22 own firearms for lawful purposes. I just want your
23 opinion on what firearms are protected under the
24 Second Amendment.

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1 A. I can give you two parts to that answer.
2 One, which firearms can be owned varies greatly
3 depending on where you are located, what state you
4 live in. Even if I were to be of a certain
5 persuasion that certain classification of firearms
6 are protected, that doesn't necessarily mean I can
7 actually purchase, own or use those. Understood?

8 I personally believe, me as an individual,
9 that any firearm in common use by a law-abiding
10 citizen should not be restricted.

11 Q. What is your definition of "common use" for
12 the purposes of that opinion?

13 A. Anything that could be used for
14 recreational shooting, target practice, hunting or
15 personal and home defense.

16 Q. You mentioned that in other states there
17 are restrictions on that use. Are those
18 restrictions consistent with your understanding of
19 what the Constitution provides?

20 A. That varies by state. Some states I would
21 agree with some of the regulations that are in
22 place, that as being reasonable and noninfringement.
23 Other states I do not agree. I do believe that
24 other states, although their intentions may be

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1 noble, have restricted unreasonably a constitutionally
2 protected right.

3 Q. Thank you. Have you ever employed as a law
4 enforcement officer?

5 A. No.

6 Q. Have you ever been in military service?

7 A. No.

8 Q. Have you been tried for or convicted of a
9 crime?

10 A. No.

11 Q. Have you ever been involved on either side
12 of a domestic violence incident?

13 A. No.

14 Q. How long have you lived in Massachusetts?

15 A. I moved back to Massachusetts from Upstate
16 New York in 2010. There was a one-year period,
17 approximately 15 months, where I lived in Upstate
18 New York. Other than that, I've lived in
19 Massachusetts my whole life.

20 Q. Do you have a gun license?

21 A. Yes.

22 Q. What type?

23 A. LTC unrestricted.

24 Q. When did you get that?

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1 A. (Examining document)

2 Q. More or less. I don't need the exact date.

3 A. I can give you the exact date. I can also
4 show you as well so you can get answers from that.

■ [REDACTED]

6 Q. Your gun license permits you to carry a gun
7 concealed, correct?

8 A. Yes.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED].

23 ■ [REDACTED]

■ [REDACTED]

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[illegible]

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7 Q. Approximately when was the training?

8 A. I couldn't say. My initial firearms safety
9 course in a formal setting was two years prior at a
10 local FFL. I have gone to the range numerous times
11 with friends and relatives before that initial
12 safety class and many times after that.

13 Q. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

Category	Value
Category 1	Value 1
Category 2	Value 2
Category 3	Value 3
Category 4	Value 4
Category 5	Value 5
Category 6	Value 6
Category 7	Value 7

18

[illegible]

19

[illegible]

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[illegible]

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Doris O. Wong Associates, Inc.

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1. [REDACTED] [REDACTED] [REDACTED]
2. [REDACTED]
3. [REDACTED] [REDACTED]
4. [REDACTED] [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED] [REDACTED]
8. [REDACTED]
9. [REDACTED] [REDACTED]
10. [REDACTED]
11. [REDACTED] [REDACTED]
12. [REDACTED]

13 Q. Could you give me a list of a handful of
14 AR-15s that you are aware of.

15 MR. PORTER: Objection to form. You can
16 answer if you know.

17	A. Clarify.
----	-------------

18 Q. Can you give me some names of AR-15s that
19 you are aware of.

20 MR. PORTER: Same objection. Go ahead.

21 A. I'm not certain exactly what you are
22 looking for in the answer. This particular rifle
23 platform, the reason why it is, like, without a
24 doubt the number one most popular long gun platform

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1 or rifle platform is because of its versatility,
2 that they can be used and built for a very wide
3 range of hunting and sporting and home defense
4 purposes.

5 It's like a fingerprint. I mean, each
6 individual firearm owner or AR-15 owner, there's a
7 very high likelihood to have customized it at some
8 point. You know, it may have a longer barrel or a
9 shorter barrel or longer stock or a shorter stock.
10 It may have a scope or it may not have a scope.
11 Many of the AR-15s out there have been made by
12 individual owners. Aside from listing whatever
13 manufacturer comes to my mind, I couldn't answer
14 that as far as how many different types of AR-15s
15 there are out there.

16 Q. Let's take, for example, the Bushmaster
17 XM-15, is that a gun you are familiar with?

18 A. Not that particular model.

19 Q. Smith & Wesson M&P 500, are you familiar
20 with that gun?

21 A. M&P 500?

22 Q. M&P 15. I'm sorry.

23 A. Correct.

24 Q. You are familiar with it?

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1 A. It's a very common entry level AR-15.

2 Q. Ruger 556, are you familiar with that gun?

3 A. Correct.

4 Q. Is that an AR-15?

5 A. There's some debate in the firearms
6 community whether it is because the gas piston is
7 slightly different than other AR-15s. It would be
8 generally classified as that, though.

9 Q. Are you familiar what a gun called "AK-47"?

10 A. That's correct.

11 Q. Are there other guns beside an Avtomat
12 Kalashnikov manufactured gun that would also be
13 classified as AK-47s?

14 A. There are a couple of companies that make
15 reproductions of the AK-47. As far as whether they
16 can be classified as that, I mean, I would think so.

17 Q. Can you give me some examples?

18 A. The first one that comes to mind is Century
19 Arms. They are well known for making reproductions.

20 Q. When you say "reproductions," you mean an
21 operating gun. You don't mean something that's just
22 a copy or a model of them, right?

23 A. It's a copy of an original model.

24 Q. But it functions as a gun?

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1 A. It functions as such, yes, but it's not the
2 original company, and so it's not anything more than
3 a functioning reproduction.

4 Q. Have you ever had self-defense training,
5 Mr. Linden?

6 A. Clarify.

7 Q. Have you ever had training that was
8 designed to give you clarity about what you can and
9 can't do to use a gun in self-defense in
10 Massachusetts?

11 MR. PORTER: Object to the form of the
12 question. You can answer.

13 A. As a component of hopefully all firearm
14 safety classes in Massachusetts, the instructors
15 make it a point to be clear of the responsibility of
16 handling firearms. Many of those instructors offer
17 additional training to that effect.

18 Aside from the standard Massachusetts State
19 Police approved training courses, I have not had
20 additional training in the defense use of firearms.

21 Q. Do you have an understanding of what the
22 rules are for self-defense in Massachusetts?

23 MR. PORTER: Object to the form of the
24 question. You can answer.

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1 A. There are a lot of people in the state who
2 don't have a clear understanding of what that is.
3 Whether I am or am not one of them, I couldn't say.

4 Q. What is your understanding of the rules for
5 use of a gun in self-defense in Massachusetts?

6 MR. PORTER: I object to the form of the
7 question, but you can answer.

8 A. If someone is acting in such a way that
9 puts me in legitimate fear of imminent harm or
10 danger, I may use lethal force to protect myself.

11 Q. Any other rules that apply?

12 MR. PORTER: I object to the form. You can
13 answer.

14 THE WITNESS: I can or should answer?

15 MR. PORTER: Answer the question if you
16 know the answer.

17 A. Aside from the defense of myself or people
18 in my home or my immediate family members, barring
19 some extreme situation, I would not exercise lethal
20 force. I wouldn't.

21 Q. Have you ever fired a gun in self-defense?

22 A. Thankfully, no, and I hope to never do so.

23 Q. Ever fire a gun at another person?

24 A. No.

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1 Q. Are you a member of the Gun Owners' Action
2 League?

3 A. My membership has lapsed. I have been a
4 member for several years.

5 Q. What period of time were you a member?

6 A. I couldn't give you an exact date, but
7 through 2015, 2016, and up until perhaps April of
8 2017 I was a member.

9 Q. Are you familiar with an organization
10 called "Comm2A"?

11 A. Yes.

12 Q. Do you have any connection to that
13 organization?

14 A. No.

15 Q. Are you familiar with the National Rifle
16 Association?

17 A. Yes.

18 Q. Is it okay if I refer to it as "NRA"?

19 A. Yes.

20 Q. You'll understand what I mean?

21 A. Yes.

22 Q. Are you a member of the NRA?

23 A. Yes.

24 Q. How long have you been a member?

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1 A. Again, I could not give you exact dates.
2 It's been for at least five or six years now.

3 Q. Are you a member of any gun club?

4 A. Yes.

5 Q. Which one?

6 A. [REDACTED].

7 Q. Any others?

8 A. No.

9 Q. Do you have shooting privileges as a member
10 of any firing range?

11 A. [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED].

14 [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED].

20 Q. How did you first learn about the
21 possibility of being a plaintiff in a lawsuit like
22 the one you are now a plaintiff in?

23 A. Gun Owners' Action League had made a public
24 notice that they were looking for people to

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1 participate in something similar to this. I can't
2 recall the exact wording, but there was a notice put
3 out by Gun Owners' Action League.

4 Q. Do you remember where you saw that notice?

5 A. It could have been one of three places. I
6 do get regular email updates from them. It could
7 have been that. I also regularly check their
8 website. It could have been that as well. It could
9 also have been off their Facebook page. I don't
10 recall which one it was.

11 Q. Did you respond to the notice as something
12 you were interested in?

13 A. Yes.

14 Q. That you were interested in being a
15 plaintiff in a lawsuit like this lawsuit?

16 A. Yes.

17 Q. Approximately when did you respond?

18 A. Last summer. I couldn't tell you exactly
19 when. I'm guessing sometime probably in September,
20 August perhaps.

21 Q. About how long a period was there between
22 the time you saw the public notice by GOAL
23 requesting volunteers to serve in this lawsuit and
24 when you responded?

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1 A. Seconds.

2 Q. You applied right away?

3 A. Immediately.

4 Q. Did someone from GOAL contact you?

5 A. I received an email confirmation that they
6 had received the inquiry. I don't recall offhand
7 which organization it was that had contacted me
8 next, but shortly after I was contacted and informed
9 that a private investigator would be speaking with
10 me to evaluate my eligibility. Who gave me that
11 information, I'm not certain whether that was GOAL
12 or Comm2A.

13 Q. I think you produced a document that might
14 help us out.

15 (Document marked as Linden
16 Exhibit 1 for identification)

17 Q. You have a document in front of you labeled
18 as Exhibit 1. Do you recognize this document?

19 A. (Examines document) Yes.

20 Q. What is it?

21 A. It's an email that I received from Gun
22 Owners' Action League.

23 Q. Does it refresh your recollection about
24 what you were responding to when you contacted GOAL?

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1 A. Yes.

2 Q. What did you respond to?

3 A. A plea or a notice put out by Gun Owners'
4 Action League looking for plaintiffs.

5 Q. Was that a notice you received by email?

6 A. I'm not sure if I had received it by email
7 or some other way.

8 Q. I see. Thank you. This is the email you
9 received in response at the top of the page?

10 A. Correct.

11 Q. Do you remember receiving this email?

12 A. Yes, but as I stated earlier, I was not
13 sure whether it was GOAL or COMM2A that had
14 responded to that. As evidenced by the email, both
15 organizations were working together so...

16 Q. Then you mentioned earlier that you were
17 told you would be contacted by a private
18 investigator. Do you remember that contact?

19 A. I don't recall her name, but I remember
20 having a lengthy conversation with her.

21 Q. Do you know if it was a private
22 investigator working for the attorneys in this case?

23 A. That was my understanding.

24 Q. Are you familiar with the name "Suzanne

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1 McComas"?

2 A. I believe that's the name.

3 Q. M-c-C-o-m-a-s?

4 A. I'm not sure of the spelling, but it sounds
5 like the woman I spoke to.

6 Q. What was your understanding of who
7 Ms. McComas worked for?

8 A. That she had been hired to essentially vet
9 potential plaintiffs in the case.

10 Q. Did she represent to you that she was an
11 attorney?

12 A. I don't believe she identified herself as
13 such.

14 Q. Did she identify herself as working for an
15 attorney?

16 A. As a third party working on behalf of.

17 Q. Do you remember what you talked to her about?

18 A. We talked about a lot. She was a very
19 pleasant and sociable person. We actually talked
20 about much beyond the scope of her initial questions.

21 Q. Are you familiar with someone named "Thomas
22 Bolioli"?

23 A. Spell the last name.

24 Q. B-o-l-i-o-l-i.

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1 A. I don't know.

2 Q. Is it your understanding that you have an
3 obligation to compensate your lawyers for this case?

4 A. I am under no obligation to compensate.

5 Q. Do you know who is paying for the lawsuit?

6 A. The National Rifle Association.

7 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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MR. KLEIN: Let's take a short break.

13

(Recess at 2:55 p.m.)

14

MR. KLEIN: (3:00 p.m.) I don't have any

15

further questions. Thanks.

16

MR. PORTER: We have no questions.

17

(Whereupon the deposition

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was concluded at 2:56 p.m.)

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C E R T I F I C A T E

I, ANTHONY L. LINDEN, do hereby certify that I have read the foregoing transcript of my testimony, and further certify under the pains and penalties of perjury that said transcript (with/without) suggested corrections is a true and accurate record of said testimony.

Dated at _____, this ____ day of _____, 2017.

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SUGGESTED CORRECTIONS

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

WITNESS: Anthony L. Linden, Vol. I

The above-named witness wishes to make the following changes to the testimony as originally given:

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 12th day of
6 September, 2017, at 2:12 p.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 26th day of
21 September, 2017.

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Under Federal Rule 30:

X Reading and Signing was requested

Reading and Signing was waived

Reading and Signing was not requested

Ken A. DiFraia

Notary Public

Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 6
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

Jason William Sawyer
Vol. I
September 13, 2017



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Original File SAWYER_Jason.txt
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF JASON WILLIAM SAWYER, a
witness called on behalf of the Defendants, taken
pursuant to the Federal Rules of Civil Procedure,
before Ken A. DiFraia, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Office of the
Attorney General, 100 Cambridge Street, Boston,
Massachusetts, on Wednesday, September 13, 2017,
commencing at 2:36 p.m.

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* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JASON WILLIAM SAWYER				
BY MS. KAPLAN	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of emails, including emails between Jason Sawyer and Suzanne McComas	23

* * * *

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P R O C E E D I N G S

JASON WILLIAM SAWYER

a witness called for examination by counsel for the Defendants, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KAPLAN:

Q. Good afternoon, Mr. Sawyer. I'm Elizabeth Kaplan. I'm one of the attorneys that represents the Defendants in this case.

If you could please state your name for the record.

A. Jason Sawyer.

Q. What is your home address?

A. [REDACTED].

Q. Are you currently employed?

A. Yes.

Q. What is your business address?

A. I work out of a home office. We have an office in Burlington, and an office in Cambridge that are local that I use sometimes.

Q. Let me back up for a second. What is the

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1 name of the business or employer you work for?

2 A. VMware.

3 Q. VMR?

4 A. VMware.

5 Q. Is there a specific address for VMware?

6 A. The headquarters is in Palo Alto,
7 California. We have offices all over the world.
8 The office I typically use is in Burlington. It's
9 on Wall Street in Burlington. I believe it's 1 Wall
10 Street in Burlington.

11 Q. What is the rest of the address for the
12 Burlington address?

13 A. 1 Wall Street, Burlington, Massachusetts.
14 I'm not sure of the Zip code.

15 Q. Have you ever been deposed before?

16 A. No, I have not.

17 Q. I'll just set forth some ground rules for
18 the deposition.

19 If a question is unclear, you can ask me to
20 clarify. If you don't seek clarification and you
21 answer the question, I will assume that you
22 understood what I was asking, do you understand?

23 A. Yes.

24 Q. If you could please wait for me to finish

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1 asking the question before you try to answer, do you
2 understand?

3 A. Yes.

4 Q. I need you to answer questions orally. So
5 if you nod your head or shake your head, the court
6 reporter can't really take down that kind of gesture.

7 A. Okay.

8 Q. If your attorney objects, you can wait for
9 him to finish the objection. He may tell you at the
10 end of the objection whether or not you can proceed
11 to answer. If he tells you to proceed to answer,
12 you can just answer the question, do you understand?

13 A. Yes.

14 Q. If you need to take a break at any time,
15 you can just ask. However, I would ask that you
16 respond to the question if there's a question
17 pending before we take the break, do you understand
18 that?

19 A. Yes.

20 Q. Do you understand that you are under oath
21 today and that you are obligated to answer each
22 question truthfully?

23 A. Yes.

24 Q. And that your testimony is under the

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1 penalty of perjury?

2 A. Yes.

3 MS. KAPLAN: I would just like to confirm
4 on the record that the deposition will be conducted
5 pursuant to the Federal Rules of Civil Procedure,
6 Rule 30.

7 MR. PORTER: Yes.

8 Q. You mentioned that you currently work for
9 VMware. What kind of business is that?

10 A. Software.

11 Q. Is it a company that creates software?

12 A. Yes.

13 Q. What is your role within the company?

14 A. I'm a presales systems engineer.

15 Q. Could you describe very briefly what that
16 is.

17 A. Essentially I help customers that are
18 looking to buy our software understand how it works
19 technically and how it could potentially fit in
20 their business.

21 Q. How long have you been employed at VMware?

22 A. Originally I started at VMware in 2006. I
23 left for a short period, about less than a year, in
24 about 2008. So I've been back at VMware probably in

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1 late 2008 until now.

2 Q. Were you a systems engineer throughout that
3 time?

4 A. No. About three months ago, I was a
5 technical account manager. It's a very similar
6 role, only on the post sales side.

7 Q. What did you do when you took that brief
8 break from working at VMware?

9 A. I worked for a start-up called "Sonian."

10 Q. What was your role at that start-up?

11 A. I was director of support and renewals.

12 Q. What does that mean?

13 A. I was essentially in charge of helping
14 customers that had support issues. I managed a
15 small team that responded to support questions.

16 Q. Were you employed before 2006?

17 A. Yes.

18 Q. What did you do before 2006?

19 A. I was also in the software business. At
20 that point I was a solutions architect, which is
21 another consulting type role.

22 Q. Can you briefly describe your educational
23 background.

24 A. I went to Northeastern on the GI Bill. I

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1 have an associate's in Management Information
2 Systems from Northeastern. I had some course work
3 towards my bachelor's, but I have not completed that
4 yet.

5 Q. When did you attend Northeastern?

6 A. After I got out of the Marine Corps. It
7 would have been the early 2000s, like, 2001 to
8 probably 2004 or 2005.

9 Q. So it sounds like you have military
10 service; is that right?

11 A. Yes, ma'am.

12 Q. Could you describe your military service.

13 A. I did five years active duty in the Marine
14 Corps. My job description was I believe technically
15 fire control systems technician. Basically I fixed
16 radars.

17 Q. Did you have additional military service or
18 was that it? You said five years I think in the
19 Marine Corps, right?

20 A. Five years active duty in the Marines.
21 When you sign a contract with the service, you
22 actually sign for eight years. So the remainder of
23 that is a reserve component.

24 Q. Are you still a reserve?

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1 A. No.

2 Q. As part of your military service, did you
3 receive weapons training?

4 A. Yes.

5 Q. Could you describe the weapons training
6 that you received.

7 A. Basic marksmanship training with rifles,
8 familiarity firing with all sorts of different crew
9 served weapons and things like that.

10 Then my primary role as a radar technician
11 was for the Hawk Missile System. I worked on the
12 radars that were part of the Hawk Missile System. I
13 was pretty familiar with the missile system.

14 Q. Were you issued a weapon as part of your
15 military service?

16 A. Yes.

17 Q. What weapon were you issued?

18 A. An M-16A2 was the primary. At times I was
19 also issued a Beretta-M9.

20 Q. Did you receive specific training on either
21 of those weapons?

22 A. Yes.

23 Q. Could you describe that briefly. Or is
24 that the marksmanship training you already talked

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1 about?

2 A. Yes. I mean, standard boot camp
3 marksmanship training, a two-week training evolution
4 in boot camp where you went through the whole rifle
5 training process from kind of start to finish. In
6 addition to that, yearly qualifications, you know,
7 after boot camp.

8 Q. Have you ever been tried for or convicted
9 of a crime?

10 A. No.

11 Q. Have you ever been involved on either side
12 of a domestic violence incident?

13 A. No.

14 Q. How long have you lived in Massachusetts?
15 Or do you live in Massachusetts?

16 A. Yes.

17 Q. How long have you lived in Massachusetts?

18 A. Since approximately 2001 or 2002.

19 Q. Where did you live prior to that?

20 A. Salem, Massachusetts.

21 Q. Sorry?

22 A. Salem, Massachusetts.

23 Q. Where did you live prior to 2001 or 2002?

24 A. Briefly after I got out of the Marine

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1 Corps, I lived in New Hampshire with relatives until
2 we could find a place. Prior to that I was in the
3 Marine Corps, mostly in Arizona, spent some time in
4 Alabama.

5 Q. Do you currently have a gun license in
6 Massachusetts?

7 A. I do.

8 Q. What type of license do you have?

9 A. Unrestricted license to carry, Category A,
10 if that's still a thing.

11 Q. Who is the or what is the issuing authority
12 for your license?

13 A. (No response)

14 Q. What agency issued your license to you?

15 A. [REDACTED].

16 Q. Do you remember when you got your license?

17 A. I renewed it once. I know they are valid
18 for five years. So seven to eight years ago.

19 That's an estimate.

20 Q. Has that ever lapsed?

21 A. No.

22 Q. Have you ever been suspended or terminated
23 for any reason?

24 A. No.

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1 Q. Have you had any problem with your license
2 at all?

3 A. No, I have not.

4 Q. Have you ever held any other type of
5 license related to guns?

6 A. I had at one point a New Hampshire
7 nonresident license to carry. That's expired. I
8 didn't renew it. I don't know if it's considered a
9 license technically, but for a while I had an
10 03 FFL, Federal firearms license. I believe that's
11 currently expired as well.

12 Q. Have you ever been licensed as a
13 manufacturer or seller of guns?

14 A. No.

15 Q. I know you talked a little bit about your
16 training in the military. Have you received any
17 other training around the use of guns?

18 A. Yes.

19 Q. Can you describe that.

20 A. I had various, you know, private training
21 courses, Sig Academy up in New Hampshire, various
22 others. I went through the training to become an
23 NRA certified and Mass. State Police certified
24 instructor. I've been to small arms firing school

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1 out of Camp Perry, which was a rifle kind of
2 introductory training program.

3 I can't think of any others off the top of
4 my head. I've been to quite a few training classing
5 and things through the years.

6 Q. Were the trainings focused on shooting or
7 marksmanship skills or on safety, or both?

8 MR. PORTER: Objection to form.

9 MS. KAPLAN: Sorry.

10 MR. PORTER: That's okay.

11 Q. I know you mentioned a group of trainings
12 just now. Talking about, for example, the Sig
13 Academy, what kinds of topics were covered under
14 that?

15 MR. PORTER: Go ahead. You can answer the
16 question.

17 A. Various. So I did, like, an initial
18 training that was kind of focused more towards
19 safety that is a requirement to get a license in
20 Massachusetts. In addition to that, later on I have
21 taken marksmanship courses of various types, you
22 know, in different disciplines and different types
23 of things. To answer the question, it's both.

24 Q. What about the training to become an NRA

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1 certified instructor, do you remember any of what
2 that entailed?

3 A. Yes. I mean, it covers essentially basic
4 firearms handling, safety, things of that nature,
5 things that essentially people need to be able to
6 handle a firearm safely.

7 Q. The small arms firing course, what did that
8 cover?

9 A. That is a program that essentially covers
10 basic marksmanship with a rifle. They do a pistol
11 version too. I did the rifle version. It primarily
12 focused towards folks that are competitive shooters
13 or who want to be competitive shooters.

14 Q. Are you yourself a competitive shooter?

15 A. Yes.

16 Q. Can you describe your competitive shooting
17 activities.

18 A. I participate in various competitive
19 shooting activities. Primarily I'm focused on what
20 we call "Across the Course High Power," which is
21 essentially rifle, traditional rifle position type
22 shooting.

23 Q. Are these competitions?

24 A. Yes.

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1 Q. Who organizes them?

2 A. A few different organizations do.

3 Primarily the Civilian Marksmanship Program of the
4 NRA, National Rifle Association. Local clubs also
5 organize competitive shooting events.

6 Q. You said you are an NRA certified
7 instructor. Have you actually given courses as a
8 firearms instructor?

9 A. Not as a primary. I have assisted other
10 instructors.

11 Q. In what types of courses have you assisted
12 other instructors?

13 A. Basic firearms safety. I have also done --
14 one of my gun clubs did an introduction to action
15 style shooting. I was involved with that as a
16 safety person.

17 Q. Going back to the basic firearms safety,
18 what are some of the topics covered in that course?

19 A. Proper care and handling of various types
20 of firearms, familiarity with how firearms work,
21 different types of actions, that sort of thing, you
22 know, safe storage recommendations. I mean, there's
23 a whole gambit of different things that are involved.

24 Q. Who offered those courses?

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1 A. So the individual instructors who are
2 certified by the NRA to be certification counselors,
3 I believe they are called, provide those. They are
4 private people, but they are certified by the NRA.

5 Q. Was self-defense a topic under any of those
6 courses that you assisted as a trainer?

7 A. Not that I can recall specifically. It was
8 really more about firearms safety.

9 Q. Do you have any specific training in the
10 use of firearms for self-defense?

11 A. Yes.

12 Q. Could you describe that.

13 A. The training I got in the Marine Corps was,
14 you know, certainly related to defense,
15 self-defense, defense of units, things like that.

16 Q. Was that training offered in a combat type
17 scenario?

18 A. I'm not sure I understand the question.

19 Q. Were you offered that training as someone
20 who might be required to defend himself in the
21 context of combat?

22 A. Yes. Specifically the Marine Corps
23 training, yes.

24 Q. Have you had any other training about

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1 self-defense?

2 A. I don't recall any specific training
3 focusing on self-defense specifically. Most of the
4 training I've been involved with has been around
5 competitive shooting of some sort. I don't remember
6 doing anything that was specifically designed
7 towards self-defense, no.

8 Q. Are you familiar with an organization
9 called "Gun Owners' Action League"?

10 A. Yes.

11 Q. If I refer to that organization as "GOAL,"
12 will you understand what I mean?

13 A. Yes.

14 Q. Are you a member of GOAL?

15 A. Yes.

16 Q. Are you familiar with an organization known
17 as Comm2A?

18 A. Yes.

19 Q. Are you a member of Comm2A?

20 A. I have been a member. I'm not sure if I'm
21 currently a member.

22 Q. Are you familiar with the National Rifle
23 Association?

24 A. Yes.

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1 Q. The acronym "NRA," do you understand that
2 to mean the National Rifle Association?

3 A. Yes.

4 Q. Are you a member of the NRA?

5 A. Yes.

6 Q. Are you a member of any other gun clubs?

7 A. Yes.

8 Q. Can you describe the other clubs that you
9 are a member of.

10 A. Currently I'm a member of [REDACTED]
[REDACTED]
[REDACTED].

13 Q. Have you ever worked for a gun dealer?

14 A. No.

15 Q. Or sold guns in any capacity?

16 A. I participated in some private sales, but
17 not as in the business of selling guns, no.

18 Q. Have you ever worked for a gun manufacturer?

19 A. No.

20 Q. Have you ever been employed by GOAL?

21 A. No.

22 Q. Have you ever been employed by Comm2A?

23 A. No.

24 Q. Have you been employed by the NRA?

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20

1 A. No.

2 Q. Have you ever volunteered for any of those
3 three organizations?

4 A. Yes.

5 Q. In what capacity?

6 A. I volunteered to help Comm2A with some
7 technical stuff, website maintenance type stuff.

8 Q. Is that all, or have you volunteered in
9 other capacities?

10 A. I'm just trying to think. I don't think
11 I've -- well, I volunteered to help GOAL count
12 ballots one year for their annual elections. I
13 can't think of any other volunteer activities I have
14 done with any of those organizations.

15 Q. Do you post on line in any on-line forums
16 about gun ownership?

17 A. Sometimes.

18 Q. In what forums?

19 A. There's a few. Northeast Shooters is a
20 sort of local forum that I post on. There's a forum
21 called "National Match" that is kind of focused more
22 on rifle competitive shooting that I post on
23 occasionally. I'm a member of different forums,
24 Cast Boolits, that kind of is focused around, you

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21

1 know, reloading. There's various other forums I'm
2 sure I've been involved in over the years. The
3 primary ones would be Northeast Shooters and
4 National Match.

5 Q. Have you ever posted specifically on GOAL's
6 social media accounts to your knowledge?

7 A. I have replied to things that they posted
8 on, things like Facebook and things like that, if
9 that's what you mean.

10 Q. Have you ever expressed any opinions about
11 this case in those forums?

12 A. Yes.

13 Q. Could you describe the opinions you
14 expressed.

15 A. You know, confusion, just confusion as to
16 how the law or how the enforcement action applies,
17 you know, just questions, things likes that, trying
18 to figure out what it means.

19 Q. Did you ever try to contact the Attorney
20 General's Office regarding your confusion?

21 A. I don't think so.

22 Q. Have you expressed any opinions on line
23 about any of the defendants in this case?

24 A. Probably interpreted it, yes, I suppose.

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22

1 Q. Could you describe those opinions.

2 A. I'm sure I expressed an opinion that the
3 enforcement action is overbroad. That's really
4 pretty much it.

5 Q. How did you first hear about this case?

6 A. I believe it was Comm2A that reached out to
7 me. You know, I had done some volunteer work for
8 them at some point. They either were asking for
9 people or they had reached out to me. I can't
10 remember specifically. It was through Comm2A
11 originally, though.

12 Q. Were you personally invited to participate
13 as a plaintiff?

14 A. My recollection is that they asked for
15 volunteers, and I responded to that request to
16 volunteer. Then they followed some sort of process
17 to figure out, you know, who was going to be
18 involved and invited me to be involved at that
19 point.

20 Q. Am I correct in understanding that when you
21 say "they asked me," you are talking about Comm2A;
22 is that right?

23 A. Yes, Comm2A.

24 Q. Have you ever participated in any other

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23

1 case as a party?

2 A. No.

3 Q. Are you compensating your lawyers in this
4 lawsuit?

5 A. No.

6 Q. Do you know who is compensating your lawyers?

7 A. I mean, I know that there are multiple
8 organizations involved, including the NRA and GOAL
9 and Comm2A. I'm not sure how they divvy that all up
10 in the back end. I assume one of them is footing
11 the bill. I believe the NRA is, but I don't know
12 for sure.

13 Q. Are you familiar with someone named "Susan
14 McComas".

15 A. I don't think so.

16 Q. Or Suzanne McComas?

17 A. Could you expand on that or provide some
18 context of some sort.

19 (Document marked as Sawyer

20 Exhibit 1 for identification)

21 Q. You've been handed what was marked as
22 Exhibit 1. Take a moment to review that. Take as
23 long as you need to become familiar with it.

24 A. (Examines document) Yes. I remember now.

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24

1 I never met her personally but --

2 MR. PORTER: Well, she did not ask you a
3 question.

4 Q. Is this an email?

5 A. Yes.

6 Q. Is this an email exchange or a series of
7 emails?

8 A. Yes.

9 Q. Who are the emails between?

10 A. Myself and Suzanne McComas.

11 Q. Do you recall receiving these emails?

12 A. Yes.

13 Q. Did you know when you received these emails
14 who Suzanne McComas was working with?

15 A. Am I allowed to...

16 Q. Yes. Feel free to review the document.

17 MR. PORTER: You can peruse through.

18 A. Yes. So as I mentioned before, I had a
19 dialogue with Comm2A about potentially being
20 involved. Suzanne McComas was the person who
21 initially contacted me about potentially being in
22 the action or suit, whatever you want to call it.

23 Q. Did she identify herself as being involved
24 with any particular organization?

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25

1 A. I don't know. I don't think so. I don't
2 remember.

3 Q. Are you familiar with someone named "Thomas
4 Bolioli"?

5 A. Yes.

6 Q. Do you know him personally?

7 A. We've met. I know him personally but not
8 well. I mean, I have met him.

9 Q. Do you know if he works with a particular
10 organization?

11 A. He works -- well, he's involved in Comm2A.
12 I don't know what the relationship is between them.

13 Q. Is that the context through which you know
14 him, as someone that's involved with Comm2A?

15 A. I think I met him originally on Northeast
16 Shooters. Yes, primarily the context would be
17 through Comm2A.

18 Q. On I believe Page 3 of this Exhibit 1, is
19 this also an email exchange?

20 A. Yes.

21 Q. Who is this email exchange between?

22 A. Between me and Thomas Bolioli.

23 Q. Do you remember this email exchange?

24 A. Yes.

27

[illegible]

Doris O. Wong Associates, Inc.

29

[illegible]

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█ [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

Q. Have you ever had to use a gun in

self-defense?

A. No.

Q. Have you ever fired a gun at another person?

A. No.

Q. In your own words, could you tell me why

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31

1 you are participating in this lawsuit.

2 A. As a competitive shooter, the platform fire
3 that we use most often [REDACTED]. I am
4 participating in the lawsuit to protect my ability
5 [REDACTED] in the context of competitive
6 shooting.

7 Q. What is your understanding of what the
8 Second Amendment protects?

9 A. The right to keep and bear arms.

10 Q. For everyone?

11 A. I'm not sure I understand the question.

12 Q. Does everyone have the right to keep and
13 bear arms, or every citizen?

14 A. Excluding citizens who are, you know,
15 guilty of felonies and things like that, yes.

16 Q. Do all citizens that meet that criteria
17 have the right to purchase any gun of any kind?

18 A. Could you clarify if you are asking do they
19 or should they. Are you asking for an opinion?

20 Q. Do you believe they have that right under
21 the Constitution?

22 A. I believe they should have that right under
23 the Constitution.

24 Q. What about military type guns?

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32

1 MR. PORTER: Object to the form of the
2 question. You can answer if you know the answer.

3 A. Can you specify.

4 Q. Do you believe citizens should be allowed
5 to have military type guns?

6 MR. PORTER: Same objection.

7 A. Can you specify what you mean by military
8 style guns. I don't understand what you mean.

9 Q. From your military service, you are
10 familiar with at least some of the weapons used in
11 the military?

12 A. Yes.

13 Q. Do you believe citizens under the
14 Constitution should have the right to have those
15 kinds of weapons for nonmilitary use?

16 MR. PORTER: Objection to form. You can
17 answer if you understand what she's asking.

18 A. I don't understand. I'm sorry. Could you
19 repeat or clarify.

20 MS. KAPLAN: That's all the questions we
21 have.

22 MR. PORTER: No questions.

23 (Whereupon the deposition
24 was concluded at 3:17 p.m.)

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33

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C E R T I F I C A T E

I, JASON WILLIAM SAWYER, do hereby certify that
I have read the foregoing transcript of my
testimony, and further certify under the pains and
penalties of perjury that said transcript
(with/without) suggested corrections is a true and
accurate record of said testimony.

Dated at _____, this ____ day of _____,
2017.

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SUGGESTED CORRECTIONS

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

WITNESS: Jason William Sawyer, Vol. I

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
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[illegible]

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 13th day of
6 September, 2017, at 2:36 p.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 27th day of
21 September, 2017.

22

23

24

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Under Federal Rule 30:

X Reading and Signing was requested

Reading and Signing was waived

Reading and Signing was not requested

Ken A. DiFraia

Notary Public

Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 7
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

Paul Nelson Chamberlain
Vol. I
September 14, 2017



DORIS O. WONG
ASSOCIATES, INC.

C O U R T R E P O R T E R S

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Original File CHAMBERLAIN_Paul.txt
Min-U-Script® with Word Index

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
: No. 17-10107-WGY
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF PAUL NELSON CHAMBERLAIN, a
witness called on behalf of the Defendants, taken
pursuant to the Federal Rules of Civil Procedure,
before Ken A. DiFraia, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Office of the
Attorney General, 100 Cambridge Street, Boston,
Massachusetts, on Thursday, September 14, 2017,
commencing at 2:45 p.m.

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* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
PAUL NELSON CHAMBERLAIN				
BY MS. KAPLAN	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of document entitled "Basic Firearms Instructor Course, Patrol Rifle"	13
Exhibit 2	Copy of email exchange between Paul Chamberlain and Thomas Bolioli	20

* * * *

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P R O C E E D I N G S

PAUL NELSON CHAMBERLAIN

a witness called for examination by counsel for the Defendants, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. KAPLAN:

Q. Hi, Mr. Chamberlain. I'm Elizabeth Kaplan. I'm an Assistant Attorney General, and I'm one of the lawyers representing the Defendants in this case.

Could you please state your name and your home address for the record.

A. Paul Nelson Chamberlain, [REDACTED]

Q. Are you currently employed?

A. I am.

Q. Could you state your business address for the record.

A. 25 Forbes Boulevard, Unit 1, Foxborough, Massachusetts 02035.

Q. Where are you employed? What is the name

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1 of the business?

2 A. American Electrical Testing Company.

3 Q. Have you ever been deposed before?

4 A. I have.

5 Q. Can you describe the circumstances in which
6 you were deposed.

7 A. It was for an employee that was terminated
8 due to extenuating circumstances.

9 Q. Was it a civil lawsuit to your knowledge?

10 A. I don't recall.

11 Q. But were you deposed as a fact witness in a
12 dispute?

13 A. Again, I don't recall. It was for my
14 company. I was just doing what I had to do. It was
15 many years ago.

16 Q. Approximately when was it, if you recall?

17 A. Seven years ago.

18 Q. Is that the only time you were deposed
19 before?

20 A. That's the only time.

21 Q. For purposes of this deposition, I'll go
22 over some ground rules.

23 MS. KAPLAN: First I would like to get on
24 the record that the entire deposition will be

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1 conducted pursuant to the Federal Rule of Civil
2 Procedure 30?

3 MR. PORTER: Plaintiffs agree.

4 Q. If I ask you a question, Mr. Chamberlain,
5 that is unclear, you should ask me to clarify. Do
6 you understand that?

7 A. I understand.

8 Q. If you don't seek clarification and you
9 answer the question, I will assume that you
10 understood. Does that make sense?

11 A. Yes, it does.

12 Q. Please wait for a question to be completed.
13 Do you understand?

14 A. I do.

15 Q. You must answer orally. The reporter
16 cannot take down, for example, nods of the head or
17 other gestures. I would ask that you either speak,
18 yes or no, or otherwise answer the question. Do you
19 understand?

20 A. I understand.

21 Q. If your attorney objects, you can wait for
22 him to tell you whether or not to answer the
23 question. If he tells you to go ahead and answer
24 the question, please do so. Do you understand?

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1 A. I understand.

2 Q. Do you understand that you are under oath
3 and that you are obligated to answer each question
4 truthfully?

5 A. I do.

6 Q. And that your testimony is under the
7 penalty of perjury, do you understand that?

8 A. I understand.

9 Q. Remind me of the place where you are
10 employed.

11 A. American Electrical Testing Company.

12 Q. What is your position there?

13 A. I'm the safety manager.

14 Q. And just briefly speaking, what does that
15 entail?

16 A. Understanding OSHA and EPA rules and
17 regulations and interpreting them for the company.

18 Q. How long have you been employed there?

19 A. Let's see, spring of 2009. That would be
20 eight years. It's a lot longer than I thought it
21 was.

22 Q. Were you employed previously somewhere
23 else?

24 A. I was.

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1 Q. Where were you employed before that?

2 A. I was employed at Allied Waste Industries.

3 Q. What was the first word?

4 A. Allied.

5 Q. Okay, Allied Waste Industries. What was
6 your position there?

7 A. Safety manager.

8 Q. How long were you at that position?

9 A. Approximately five years.

10 Q. Were you employed prior to that?

11 A. I was.

12 Q. What was your employment previous to that?

13 A. Boston Sand and Gravel Company.

14 Q. Was that also as a safety manager?

15 A. Yes, it was.

16 Q. For how long were you employed there?

17 A. A little over four years.

18 Q. Did you have employment previous to the
19 Boston Sand and Gravel Company?

20 A. Yes, I did.

21 Q. Was all of your previous employment in the
22 nature of safety management?

23 A. For the most part, yes.

24 Q. Was there anything else that you did?

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1 A. I was a sample technician for Roy F. Weston
2 for a short period of time. I ran the yard at
3 Boston Sand and Gravel for a short period of time.
4 There were other roles sometimes mixed in. My
5 official role was almost always safety manager.

6 Q. And what briefly is your educational
7 background?

8 A. Starting from?

9 Q. From high school.

10 A. I went to high school at Old Rochester
11 Regional High School, located in Mattapoisett. From
12 there I went to Massachusetts Maritime Academy,
13 graduated from there with a bachelor's of science in
14 Marine Safety Environmental Protection.

15 Q. Did you have further education after your
16 bachelor's degree?

17 A. Various certificates related to my
18 professional career, but that's about it.

19 Q. Have you ever been employed as a law
20 enforcement officer?

21 A. I have not.

22 Q. Do you have any military service?

23 A. No, I don't.

24 Q. Have you ever been tried for or convicted

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1 of a crime?

2 A. No.

3 Q. Have you ever been involved on either side
4 of a domestic violence incident?

5 A. No.

6 Q. Have you lived in Massachusetts your whole
7 life?

8 A. No.

9 Q. How long have you lived in Massachusetts?

10 A. For all but two years. That's the best way
11 to answer that. From '98 until 2002, I lived in New
12 Hampshire. No, not '98 to 2002. It was '98 to 2000
13 I lived in New Hampshire, two years.

14 Q. Otherwise, you lived in Massachusetts?

15 A. Correct.

16 Q. Do you currently hold a gun license?

17 A. I do.

18 Q. What specific license do you hold?

19 A. License to carry, Class A.

20 Q. What entity issued you your license to
21 carry?

22 A. [REDACTED].

23 Q. Is your license current?

24 A. It is.

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1 Q. Do you know when it was issued to you?

2 A. June of last year.

3 Q. Was that a recertification or a reissue or
4 was this the first time that you had a license to
5 carry?

6 A. I've had other licenses to carry in the
7 past.

8 Q. From other towns?

9 A. That's correct.

10 Q. What towns have you had a license to carry
11 from?

12 A. I had a license to carry from [REDACTED]
13 [REDACTED], my hometown where I grew up. I also
14 had a license to carry -- well, it's not called that
15 technically -- in [REDACTED]. It is
16 a pistol and revolver permit in New Hampshire.

17 Q. Could you estimate how long in total you
18 have had a license to carry of some sort.

19 A. All told, six years.

20 Q. Have you ever had a license suspended or
21 terminated for some reason?

22 A. No.

23 Q. Have you ever had any other type of license
24 related to guns other than the one you mentioned in

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1 New Hampshire?

2 A. No.

3 Q. Have you ever held a seller's license, for
4 instance?

5 A. No, I have not.

6 Q. Have you had any safety training related to
7 the use of firearms?

8 A. I have.

9 Q. Could you describe the training that you
10 have had.

11 A. I took the Massachusetts state-approved
12 Basic Pistol Course -- don't quote me on the exact
13 name -- in order to get my license to carry this
14 past year in 2016, and prior to that I had the
15 Hunter's Safety Education Course.

16 Q. Who offered the Massachusetts state-
17 approved course that you took?

18 A. I don't remember his name. I'm sorry.

19 Q. Do you happen to know the company or
20 organization that was offering the course?

21 A. I don't recall offhand. I've got it all in
22 my files. I've got a horrible memory at times.

23 Q. Do you know who offered the Hunter's Safety
24 Course?

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1 A. That was back when I was 18 years old. I
2 don't recall.

3 Q. Have you had any other training related to
4 the use of guns besides these two courses?

5 A. With the Boy Scouts. I guess that would
6 count.

7 Q. What kind of training did you get with the
8 Boy Scouts?

9 A. It was basic rifle marksmanship at the Boy
10 Scouts camp. That was a very long time ago.

11 Q. Did any of the training that you did
12 include information about the use of guns in
13 self-defense?

14 A. In self-defense, not specifically, no.

15 Q. Have you ever been a trainer for other
16 people regarding the use of guns?

17 A. I have not.

18 (Document marked as Chamberlain
19 Exhibit 1 for identification)

20 Q. You can take a moment to look at that
21 document. See if you recognize it. Look up when
22 you are ready for a question.

23 MR. HOWE: Did we identify the document for
24 the record?

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1 MR. PORTER: Not yet. Just to clarify, how
2 in-depth did you want him to review it?

3 Q. It's too long. Clearly you don't have to
4 read the whole thing. I can represent to you that
5 this was provided to the defendants as part of the
6 documents that the plaintiffs provided and that it
7 was indicated as having come from you. If you could
8 just take a look at it and tell me if you recognize
9 it.

10 A. I do.

11 Q. What is this document?

12 A. Basic Firearms Instructor Course Patrol
13 Rifle. It's available on the web.

14 Q. You obtained it from a website?

15 A. I did.

16 Q. Have you ever taken this course?

17 A. I have not taken this course.

18 Q. But it's just a document you had in your
19 possession; is that right?

20 A. If you call Google my possession. I guess
21 it's in everyone's.

22 Q. Did you save a copy?

23 A. I have a copy of it, yes.

24 Q. Why did you access this document on the web?

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1 A. It was in discussion with my lawyers about
2 a certain topic.

3 Q. Without telling me the substance of the
4 conversation between you and your lawyers, is there
5 anything more that you can tell me about why you
6 decided to access the document and save a copy of
7 it?

8 A. It's just something I was aware of and had
9 pointed it out. That was it.

10 Q. Are you familiar with an organization
11 called "Gun Owners' Action League"?

12 A. I am.

13 Q. If I refer to that organization as "GOAL,"
14 will you know what I'm talking about?

15 A. I will.

16 Q. Are you a member of GOAL?

17 A. I am.

18 Q. Are you familiar with an organization known
19 as "Comm2A"?

20 A. I am.

21 Q. Are you a member of Comm2A?

22 A. I don't think you are a per say member of
23 Comm2A.

24 Q. Are you familiar with the National Rifle

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1 Association?

2 A. I am.

3 Q. If I refer to it as "NRA," will you know
4 what I'm referring to?

5 A. I will.

6 Q. Are you a member of the NRA?

7 A. I am.

8 Q. Are you a member of a gun club?

9 A. Yes, I am.

10 Q. What gun club are you a member of?

11 A. [REDACTED].

12 Q. Are you a member of any other organization
13 that has anything to do with guns?

14 A. No.

15 Q. Have you ever worked for a gun dealer?

16 A. I have not.

17 Q. Have you ever worked for a gun
18 manufacturer?

19 A. I have not.

20 Q. Have you ever been employed by -- I think I
21 know the answer to this. Have ever been employed by
22 GOAL, Comm2A or the NRA?

23 A. No.

24 Q. Do you participate in any activities

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1 organized by GOAL?

2 A. I have, yes.

3 Q. What kinds of activities?

4 A. They held a raffle at -- I mean, it's not
5 organized by GOAL per se I guess. They will --
6 like, a gun salesperson from some gun shop will have
7 a sale or something. GOAL will be present there
8 raffling things off. As far as organized events by
9 GOAL, not really an organized event, but they are
10 there.

11 Q. Did you participate in the raffle?

12 A. I did.

13 Q. Have you ever participated in any
14 activities organized by Comm2A?

15 A. Not that I am aware of.

16 Q. What about activities organized by the NRA?

17 A. Again, not that I'm aware of.

18 Q. Do you receive information from any of
19 these organizations?

20 A. I do.

21 Q. In what form?

22 A. Email typically.

23 Q. Are you on email lists, for example?

24 A. Yes, I am.

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1 Q. Do you donate money to these organizations?

2 A. I do.

3 Q. Are you active on social media?

4 A. Yes, I am.

5 Q. What sites are you active on?

6 A. Northeast Shooters, Twitter, Facebook.

7 Q. Do you have accounts with each of those
8 sites?

9 A. Yes, I do.

10 Q. Have you posted opinions about gun
11 ownership on those sites?

12 A. Yes, I have.

13 Q. On all three of those sites?

14 A. Probably. I believe so.

15 Q. At Northeast Shooters, have you posted
16 anything -- well, are you familiar with the Attorney
17 General's Notice of Enforcement that issued on
18 July 20, 2016?

19 A. I am.

20 Q. Did you post anything on the Northeast
21 Shooters website about that notice?

22 A. Not that I recall.

23 Q. How about on Twitter?

24 A. Not that I recall.

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1 Q. Did you post anything on Facebook?

2 A. No. I don't post that much on Facebook.

3 Q. Have you expressed any opinions about this
4 particular lawsuit in any of those forums?

5 A. No.

6 Q. How did you hear about this case?

7 A. In an email that was sent out by I believe
8 GOAL looking for potential plaintiffs.

9 Q. Did you receive that email through a GOAL
10 list serve?

11 A. It was a blanket email to members.

12 Q. Did you respond to that email?

13 A. I did.

14 Q. Do you recall having any email exchanges
15 with specific individuals about participating as a
16 plaintiff in this case?

17 A. I don't recall who at GOAL it was.

18 Q. Are you familiar with a person named
19 "Thomas Bolioli"?

20 A. Yes, I am. Actually, I believe that's who
21 I spoke with, now that you say that name.

22 Q. Do you know what organization he's
23 connected with?

24 A. I don't recall whether it's GOAL or Comm2A.

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20

1 I'm sorry.

2 (Document marked as Chamberlain
3 Exhibit 2 for identification)

4 A. (Examines document) Comm2A, there you go.

5 MR. PORTER: Wait for a question.

6 Q. If you could take a moment and review this
7 document. Do you recognize this document?

8 A. I do.

9 Q. What is it?

10 A. It's the original request for plaintiffs.

11 Q. Is it an email exchange?

12 A. It is.

13 Q. Who is it between?

14 A. Myself and Thomas Bolioli.

15 Q. Does this refresh your recollection at all
16 as to Thomas Bolioli's affiliation?

17 A. It does.

18 Q. What organization is he affiliated with?

19 A. Commonwealth2A.

20 Q. Are you compensating your lawyers?

21 A. No, I am not.

22 Q. Do you know who is paying your lawyers for
23 this lawsuit?

24 A. I really don't know which organization it is.

[illegible]

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1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

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22

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24

Q.

Doris O. Wong Associates, Inc.

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[REDACTED]

10 Q. In your own words, why are you
11 participating in this lawsuit?

12 A. I was asked, and I thought I would be a
13 good plaintiff.

14 Q. Why did you feel you would be a good
15 plaintiff?

16 A. I'm pretty much as honest and law abiding
17 as you can get. Again, I never had any brushes with
18 the law. I grew up with guns in the household.

19 Q. What do you hope to achieve as a result of
20 this lawsuit?

21 A. I would like our state to have less arcane
22 gun laws.

23 MS. KAPLAN: Let's take another quick
24 break. We can probably wrap up pretty quickly after

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29

1 that.

2 (Recess at 3:19 p.m.)

3 BY MS. KAPLAN: (3:22 p.m.)

4 Q. Do you have any plans to purchase guns in
5 the future?

6 A. Yes.

7 Q. Are there specific guns that you plan to
8 purchase?

9 A. Define that. There are lots of guns I
10 would like to purchase. Whether I can afford them
11 or not is another story. It's like a sports car.

12 Q. Putting finances aside for a moment, if you
13 could afford to buy whatever guns you wanted, are
14 there guns you would like to purchase in the future?

15 A. [REDACTED]
16 [REDACTED].

17 MS. KAPLAN: I think that's all we have.

18 Thank you.

19 MR. PORTER: We have no questions.

20 (Whereupon the deposition
21 was concluded at 3:23 p.m.)
22
23
24

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C E R T I F I C A T E

I, PAUL NELSON CHAMBERLAIN, do hereby certify
that I have read the foregoing transcript of my
testimony, and further certify under the pains and
penalties of perjury that said transcript
(with/without) suggested corrections is a true and
accurate record of said testimony.

Dated at _____, this ____ day of _____,
2017.

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
------	------	-------------	--------

[illegible]

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 14th day of
6 September, 2017, at 2:45 p.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 29th day of
21 September, 2017.

22

23

24

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Under Federal Rule 30:

X Reading and Signing was requested

Reading and Signing was waived

Reading and Signing was not requested

Ken A. DiFraia

Notary Public

Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 8
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

James L. Wallace
Vol. I
September 12, 2017



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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF GUN OWNERS' ACTION LEAGUE, INC., THROUGH ITS DESIGNEE JAMES L. WALLACE, a witness called on behalf of the Defendants, taken pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, before Ken A. DiFraia, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Office of the Attorney General, 100 Cambridge Street, Boston, Massachusetts, on Tuesday, September 12, 2017, commencing at 9:59 a.m.

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* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JAMES L. WALLACE				
BY MR. KLEIN	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of Notice of Taking Deposition, with attached Schedule A	8
Exhibit 2	Copy of training materials, Bates Nos. GOAL-000094 through GOAL-000111	39
Exhibit 3	Copy of page from GOAL's website, Bates Nos. GOAL-000162 through GOAL-000164	54
Exhibit 4	Copy of information from GOAL's website, Bates Nos. GOAL-000171 through GOAL-000173	54

* * * *

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P R O C E E D I N G S

JAMES L. WALLACE

a witness called for examination by counsel for the Defendants, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KLEIN:

Q. Mr. Wallace, can you state your full name, your home and your business address for the record, please.

A. James Lee Wallace. [REDACTED]

[REDACTED] My business address is 361 West Main Street, Northborough, Massachusetts.

Q. And what is the name of the business?

A. Gun Owners' Action League, Incorporated.

Q. Thank you. My name is Gary Klein. I'm one of the attorneys for the defendants in this matter. The matter we are taking the deposition in is called "Worman versus Baker." My understanding is that GOAL is one of the plaintiffs in that action. Is that consistent with your understanding?

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1 A. Yes.

2 Q. Have you ever been deposed before?

3 A. No.

4 Q. I want to give you some ground rules before
5 we start. If you could keep those in mind over the
6 course of the deposition, it would be helpful.

7 If any question I ask is unclear, I want
8 you to ask me to clarify it. If you don't ask me to
9 clarify, I'm going to assume you understood it. Is
10 that okay?

11 A. Yes.

12 Q. It is important that you answer all the
13 questions verbally and not nod your head or shake
14 your head because the court reporter can't take down
15 nods and shakes, okay?

16 A. Yes.

17 Q. I want you to wait until all my questions
18 are completed. There's a possibility that when a
19 question is asked your counsel will object to it.
20 Your counsel will either instruct you to go ahead
21 and answer it if you know the answer or he will
22 instruct you not to answer. And, in general, it's
23 important that you wait for the questions to be
24 completed so that the reporter can take everything

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1 down. The reporter wouldn't be able to do that if
2 we talk over each other. Is that okay?

3 A. Yes.

4 Q. If you need a break at any time, please let
5 me know. We can always take a break, unless a
6 question is pending, okay?

7 A. Yes.

8 Q. You understand that you are under oath and
9 that you have to answer all my questions truthfully,
10 right?

11 A. Yes.

12 Q. Your testimony is under the penalties of
13 perjury, do you understand that?

14 A. Yes.

15 Q. It's my understanding that the
16 organizational name --

17 MR. HOWE: Before you begin, can we put the
18 stipulations on the record?

19 MR. KLEIN: Sure.

20 MR. HOWE: Let the record reflect that all
21 objections, except as to form, are reserved until
22 the time of trial. All motions to strike are
23 reserved until the time of trial.

24 Mr. Wallace, you have the right to read and

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1 sign your deposition transcript in this case. Do
2 you wish to exercise that right?

3 MR. PORTER: Yes, he will.

4 MR. GEORGE: Yes.

5 THE WITNESS: Yes.

6 MR. HOWE: We will waive notary, and he
7 will read and sign within 30 days.

8 MR. KLEIN: For the record, it's our
9 position that the entire deposition is being
10 conducted according to the Federal Rules.

11 Q. Now, it's my understanding that the name of
12 your organization, Gun Owners' Action League, is
13 often shortened and described as "GOAL," which is an
14 acronym; is that correct?

15 A. Correct.

16 Q. So if I use the term "GOAL," you will
17 understand that to mean Gun Owners' Action League in
18 the context I'm asking the question?

19 A. Yes.

20 Q. And you understand that this deposition is
21 being taken of GOAL and that you are a
22 representative of GOAL in the context of this
23 deposition?

24 A. Yes.

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1 Q. Do you understand that your answers in this
2 deposition will bind GOAL as an organization?

3 A. Yes.

4 (Document marked as Wallace
5 Exhibit 1 for identification)

6 Q. You have in front of you a document labeled
7 Exhibit 1. Is this a document that is familiar to
8 you?

9 A. (Examines document) Yes.

10 Q. Have you seen it before?

11 A. Yes.

12 Q. If you look at Schedule A, which starts on
13 Page 3 and continues to Page 4, have you reviewed
14 the topics listed there?

15 A. Yes.

16 Q. Are you prepared to respond on behalf of
17 GOAL with respect to each of those topics?

18 A. To the best of my ability, yes.

19 Q. Thank you. Can you tell me your job title,
20 please.

21 A. Executive director.

22 Q. How long have you been in that position?

23 A. Since 2005.

24 Q. Did you work for GOAL before 2005?

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1 A. Yes.

2 Q. What position did you have then?

3 A. I was their lobbyist and public speaker.

4 Q. Was that your job title?

5 A. No.

6 Q. What was your job title at that time?

7 A. I don't remember.

8 Q. What period of time did you work as a

9 lobbyist and public speaker for GOAL?

10 A. From December of 2000 until 2005.

11 Q. Where did you work before you worked at

12 GOAL?

13 A. U.S. Post Office.

14 Q. What period of time did you work there?

15 A. Approximately 1992 to 2000.

16 Q. In what capacity?

17 A. I was a letter carrier.

18 Q. Were you in the working world before 1992?

19 A. Yes.

20 Q. I don't want to assume your age. I was
21 letting you tell me whether you were working before
22 then. Where did you work before 1992?

23 A. For a very brief time, I actually owned a
24 bait and tackle shop.

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1 Q. What was the name of that business?

2 A. Big Jim's Bait and Tackle.

3 Q. Did that business sell guns?

4 A. No.

5 Q. By what period of time were you owner of
6 Big Jim's Bait and Tackle?

7 A. It was only about six months.

8 Q. Any other employment after you finished
9 your educational experience but before you started
10 at the U.S. Post Office?

11 A. Yes. It would probably be easier to start
12 from right after high school, which was the United
13 States Army.

14 Q. How long were you in the Army?

15 A. Two years and ten months.

16 Q. What period of time was that?

17 A. 1983 to 1986.

18 Q. Where did you serve?

19 A. Basic training was in Fort Leonard Wood,
20 Missouri. Radio school was in Fort Sill, Oklahoma.
21 Then approximately 18 months in Germany, then
22 finished the remainder of my term in Fort Dix, New
23 Jersey.

24 Q. Did you have training in the use of weapons

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1 while you were in the Army?

2 A. Yes.

3 Q. Which weapons were you trained on?

4 A. M-16, M-203, M-60, grenades. That's about
5 it.

6 Q. Did you have a side arm as well?

7 A. No.

8 Q. Approximately how long would you say your
9 training on the M-16 lasted? How much training did
10 you have?

11 A. The bulk of it was in basic training.

12 Q. How long was your basic training period?

13 A. Eight weeks.

14 Q. So it was one of the issues covered during
15 the basic training?

16 A. Excuse me?

17 Q. Use of the M-16, was that one of the issues
18 covered in your basic training?

19 A. Yes.

20 Q. Did you get any further training on the use
21 of that weapon after basic training?

22 A. It was very limited after basic, maybe once
23 a year.

24 Q. Did you have an opportunity to shoot an

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1 M-16 during basic training?

2 A. Yes.

3 Q. About how often?

4 A. It would be hard to recollect.

5 Q. During the once-a-year initial training
6 that you had, did you also get the opportunity to
7 shoot the M-16?

8 A. Yes. We had to qualify once a year.

9 Q. "Qualify" meaning qualify at a range?

10 A. Yes.

11 Q. What else was involved in qualifying with
12 the M-16?

13 A. During the requalification every year, it
14 was just simply what we called "zeroing in your
15 rifle" and then shooting -- there were static drop
16 targets. We had to hit a minimum of those targets
17 to qualify every year.

18 Q. I think we pretty much covered everything
19 except for 1986 to 1992. Are there other jobs that
20 lasted any substantial period at that time?

21 A. Substantial time? For most of that time, I
22 was a carpenter.

23 Q. Anything else?

24 A. Machinist.

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1 Q. What kind of machining did you do?

2 A. Fairly soon after the military, I attended
3 the Boston Tooling and Machining Institute. Once I
4 graduated there, I found a job at DG O'Brien in
5 Seabrook. I manufactured on a lathe underwater
6 cable connectors.

7 Q. Did any of your duties as a machinist
8 involve guns?

9 A. No.

10 Q. Other than your time in the military and
11 your time at GOAL, did you have any other jobs that
12 involved use or advocacy about guns?

13 A. Not jobs.

14 Q. Thank you. What is the highest degree of
15 education that you obtained?

16 A. Twelfth grade, high school.

17 Q. Where did you get your high school degree?

18 A. Whittier Regional Vocational Technical High
19 School.

20 Q. Located where?

21 A. Haverhill, Massachusetts.

22 Q. Have you ever been employed as a law
23 enforcement officer?

24 A. No.

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1 Q. Have you ever been tried or convicted of a
2 crime?

3 A. No.

4 Q. Have you ever been involved on either side
5 of a domestic violence incident?

6 A. No.

7 Q. Have you lived in Massachusetts your whole
8 life?

9 A. Other than the military.

10 Q. I assume you have a gun license; is that
11 correct?

12 A. Yes.

13 Q. What type?

14 A. License to carry.

15 Q. Has that ever been suspended?

16 A. No.

17 Q. Has it ever been revoked?

18 A. No.

19 Q. Has it ever lapsed?

20 A. No.

21 Q. Approximately when did you obtain it?

22 A. License to carry would have been when I
23 turned 21.

24 Q. Now you can tell us your age I guess.

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1 MR. PORTER: Was that, like, ten years ago?

2 A. Because we usually have our FID first when
3 we are young. Then we move into license to carry.
4 I'm 52, so...

5 Q. Do you have any licenses related to guns
6 from any other state besides Massachusetts?

7	A.	No.
---	----	-----

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
--	------------	------------	------------	------------

[illegible]

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21 Q. Let's go back to your duties at GOAL. What
22 are your current duties and responsibilities as
23 executive director?

24 A. Pretty much everything that has to do with

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1 running the organization.

2 Q. Could you be a little more specific.

3 A. Day-to-day operations, overseeing of the
4 accounting processes, preparing whatever the board
5 needs, making sure education and training is up to
6 par, scheduling, lobbying.

7 Q. Did you say blogging with a "B"?

8 A. Lobbying.

9 Q. Lobbying?

10 A. Yes, writing, public speaking.

11 Q. When you say "writing," what type of
12 writing do you do?

13 A. Anything from drafting legislation to
14 writing for blogs, writing for our newspaper.

15 Q. Do you post material on GOAL's website?

16 A. I don't normally do the posting.

17 Q. Do you write material that gets posted on
18 GOAL's website?

19 A. Yes.

20 MR. PORTER: Remember to let him finish the
21 whole question.

22 A. I'm sorry.

23 Q. That's fine. How many other employees does
24 GOAL have?

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1 A. Currently four.

2 Q. Are they all full-time?

3 A. No.

4 Q. How many full-time employees does GOAL have?

5 A. Including myself, four.

6 Q. Can you give me their names and job titles,
7 please.

8 A. Jon Green.

9 Q. J-o-h-n?

10 A. J-o-n.

11 Q. What is his title?

12 A. Director of education and training; Angela
13 Fisher.

14 Q. What is her job title?

15 A. Chief of staff; Michael Sweeney, director
16 of communications.

17 Q. Is he related to Attorney Sweeney, who is a
18 lawyer in this case?

19 A. I don't believe so.

20 Q. That would leave one other employee that's
21 part-time; is that right?

22 A. That's correct.

23 Q. Who is that?

24 A. Michael Chuldenski.

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1 Q. What is his position?

2 A. Outreach coordinator.

3 Q. Does that mean outreach to the members?

4 A. To members mostly.

5 Q. I should have asked this earlier. Is GOAL
6 a membership organization?

7 A. Yes.

8 Q. Is it incorporated as a nonprofit?

9 A. Yes.

10 Q. 501(c)(3)?

11 A. (4).

12 Q. Have there been any changes to GOAL's
13 corporate form in the last ten years?

14 A. No.

15 Q. In the last 20 years?

16 A. Not that I'm aware of.

17 Q. Going back to 2000, do you know of any
18 change in GOAL's corporate form?

19 A. No.

20 Q. It's always been incorporated as far as you
21 know and always as a 501(c)(4)?

22 A. Yes.

23 Q. Is it fair to say GOAL's primary sources of
24 income are membership dues and contributions?

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1 have?

2 A. Currently just over 15,000.

3 Q. Do you remember how many members Goal had
4 in 2016?

5 A. It would be approximately the same.

6 Q. And 2015?

7 A. In 2015, if my memory recalls, somewhere
8 around 14,000.

9 Q. Is your membership primarily limited to
10 citizens of the Commonwealth of Massachusetts?

11 A. Primarily.

12 Q. Is GOAL organized as a Massachusetts-based
13 organization?

14 A. Yes.

15 Q. Most of its work is in Massachusetts, right?

16 A. Yes.

17 Q. Does GOAL own any real estate?

18 A. No.

19 Q. Does GOAL have a gun seller's license?

20 A. A retailer's license, yes.

21 Q. It's a gun retailer's license, right?

22 A. Correct.

23 Q. Issued by what town?

24 A. It would be Northborough.

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1 Q. Has that license been suspended or
2 terminated for any reason?

3	A.	No.
---	----	-----

4 Q. Does GOAL have any other licenses related
5 to guns?

6	A. Yes.
---	---------

7 Q. What types?

8 A. We have a state ammunition license.

9 Q. Has that ever been revoked or suspended for
10 any reason?

11 A. No. And we have the firearms, the Federal
12 license as well.

13 Q. Has that ever been terminated or suspended
14 for any reason?

15	A.	No.
----	----	-----

16	Q. Have any of GOAL's licenses ever lapsed?
----	---

17 A. Not that I'm aware of.

18 Q. Does GOAL maintain a place of business?

19	A. Yes.
----	---------

20 Q. What type of building is it in?

21	A. A steel structural commercial building.
----	--

22 Q. In Northborough?

23	A. Yes.
----	---------

23

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

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[REDACTED] [REDACTED]

[REDACTED]

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

5 Q. You mentioned GOAL offers training. Could
6 you give me a list of the types of training GOAL
7 offers.

8 A. I can certainly try to give you a partial
9 list.

10 Q. Sure.

11 A. Basics of Pistol training, which is an NRA
12 course.

13 Q. "NRA" meaning National Rifle Association?

14 A. Yes.

15 Q. Just so we're clear, we'll call it "NRA"
16 from now on, okay?

17 A. Of course. Home Fire Safety Course, which
18 is another NRA course.

19 Q. When you say these courses are NRA courses,
20 what do you mean?

21 A. The curriculum was developed by the NRA.

22 Q. Do you have to get permission from the NRA
23 at all for the course?

24 A. You have to register the course, and you

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1 have to be a certified trainer, and the materials
2 come from the NRA.

3 Q. Does NRA offer training to the trainers who
4 offer this course in Massachusetts?

5 A. Yes.

6 Q. Would the trainers mostly be you and
7 Mr. Green?

8 A. Mr. Green.

9 Q. Always Mr. Green?

10 A. Not always. We have a cadre of trainers
11 across the state.

12 Q. How do you develop those trainers?

13 A. Very carefully. They are vetted usually
14 through Mr. Green. Then they have to go through an
15 approved trainer's course which typically takes at
16 least a weekend to accomplish.

17 Q. Is that approved trainer's course offered
18 by GOAL?

19 A. Yes.

20 Q. It's usually conducted by GOAL as well?

21 A. Excuse me?

22 Q. Is it usually conducted by GOAL as well?

23 A. Yes.

24 Q. Is that typically Mr. Green?

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1 A. Correct.

2 Q. Are there other trainings besides these two
3 that you mentioned?

4 A. Yes. As a matter of fact, we have this
5 week what's called a "Combat Focus Course."

6 Q. Tell me more about that training.

7 A. It's conducted by a Mr. Rob Pincus, who
8 travels nationally. That's a pistol course.

9 Q. What about the training connects the
10 training to combat?

11 A. It's a good question. I'm not sure it
12 actually does. I think it's just a selling point
13 for some reason.

14 We have other courses. There's a series of
15 what we call "introduction courses," intro for
16 short. There's Intro to Trap Shooting, Intro to
17 Basic Pistol, Intro to Sporting Rifle. There are
18 certain sports such as IDPA, which is International
19 Defensive Pistol. We have an intro course for that.

20 Q. Anything else you can think of?

21 A. Occasionally we will run other instructor
22 courses with the help of the NRA, such as Short Gun
23 Instructor. Then there are various teachers that
24 come in. They are some reloading courses, metallic

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1 cartridge reloading, pistol reloading, occasionally
2 a defensive knife course.

3 Q. The metallic cartridge reloading, is that
4 reloading ammunition?

5 A. Yes. Occasionally we will have a martial
6 arts instructor that comes in and does a defensive
7 course for women that is non-gun related.

8 Q. Does GOAL offer the basic safety training
9 that is required to get a Massachusetts gun license?

10 A. Yes.

11 Q. You mentioned the NRA, National Rifle
12 Association. Does GOAL have any ongoing
13 relationship with the NRA?

14 A. GOAL is the state affiliate for the NRA.

15 Q. What does that mean exactly?

16 A. Basically we are the named state
17 association that works closely with the NRA on a lot
18 of issues from training to politics.

19 Q. Does GOAL pay something to the National
20 Rifle Association to attain that status?

21 A. No.

22 Q. Does GOAL contribute to the National Rifle
23 Association?

24 A. No.

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1 Q. Does the National Rifle Association provide
2 any financing to GOAL?

3 A. Occasionally.

4 Q. What for?

5 A. Grants.

6 Q. Can you give me one example of a grant.

7 A. A recent grant that was awarded was to do a
8 mailing to potential members across the State of
9 Massachusetts, a membership mailing.

10 Q. Typically does GOAL have to apply to
11 receive those grants from the NRA?

12 A. Yes.

13 Q. Are you familiar with an organization
14 called "Commonwealth2A"?

15 A. Yes.

16 Q. Which is also known as "Commonwealth Second
17 Amendment"?

18 A. Yes.

19 Q. Is it okay if I use the term "Comm2A" to
20 apply to it? Is that a term that's familiar to you?

21 A. Yes.

22 Q. What relationship does GOAL have to Comm2A?

23 A. Nothing official.

24 Q. Does GOAL sometimes work with Comm2A?

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1 A. I would say we converse. I don't know that
2 "work with" them is the right way to say it, since
3 they are a litigation group and we are not.

4 Q. When you say "litigation group," what do
5 you mean by "litigation group"?

6 A. Their primary mission is litigation.

7 Q. Are you personally involved as an officer,
8 employee, or otherwise, with Comm2A?

9 A. No.

10 *Q. Are there other GOAL employees who are
11 employed by or otherwise affiliated with Comm2A?

12 *A. No, other than maybe somebody that may have
13 donated. I don't know.

14 MR. GEORGE: Would you repeat the last
15 question and answer.

16 *(Question and answer read)

17 MR. GEORGE: And what do you mean by
18 "affiliated"?

19 Q. Are there other employees that have a
20 connection to Comm2A either because they work for
21 Comm2A or because they have a board position or if
22 they are an officer?

23 A. Not that I'm aware of.

24 MR. GEORGE: Thank you.

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1 Q. Does GOAL own a gun range?

2 A. No.

3 Q. Does GOAL have any affiliation with or
4 ownership interest in any gun range?

5 A. It's two different questions. Certainly
6 affiliated with. We have approximately
7 140 affiliated organizations across the state.
8 Quite a few of them, many of them, have ranges.

9 Q. You say an organization is affiliated with
10 GOAL. How does that affiliation become formalized?

11 A. Through a membership process. They pick a
12 level of affiliation for GOAL.

13 Q. They would join GOAL as an organizational
14 member, in effect?

15 A. Correct.

16 Q. And they would pay dues to GOAL?

17 A. Correct.

18 Q. Is there any other connection between GOAL
19 and gun ranges across the state?

20 A. We use many of them to facilitate for our
21 live fire for our training. We run courses
22 typically throughout many of our affiliated clubs
23 across the state.

24 Q. Are there other forms of -- are there other

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1 types of companies that are GOAL affiliates besides
2 gun ranges?

3 A. Some of them are typical gun ranges. Some
4 are fish and game clubs and may or may not have
5 shooting facilities, have general interest in fish
6 and wildlife issues.

7 Q. Those are also affiliated in the same way
8 as corporate members of GOAL?

9 A. I wouldn't refer to them as corporate
10 members, but yes.

11 Q. Organizational members of GOAL, is that a
12 better term?

13 A. Yes.

14 Q. Can you tell me whether GOAL had any role
15 in finding the other plaintiffs besides GOAL that
16 are participating in this litigation?

17 A. Yes.

18 Q. What was that role?

19 A. We were simply seeking out individuals that
20 may have an interest in becoming a plaintiff, as
21 well as other, I'm sure, entities did as well.

22 Q. What did GOAL do to seek out individuals
23 who had an interest in participating in the case?

24 A. On an individual case-by-case basis, we got

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1 the word out that we were looking for people that
2 may be interested. To some extent we talked to
3 people who were and were not interested.

4 Q. How did you get the word out?

5 A. Mostly word of mouth from our staff.

6 Q. Did you publish an inquiry in any form?

7 A. I don't recall, to be honest.

8 Q. Does GOAL have a Facebook page?

9 A. Yes.

10 Q. Did GOAL ever state on its Facebook page
11 that it was looking for plaintiffs to participate in
12 an action like this one?

13 A. I don't recall.

14 Q. Does GOAL have a Twitter account?

15 A. Yes.

16 Q. Did GOAL ever tweet that it was looking for
17 plaintiffs to participate in an action like this one?

18 A. I don't recall.

19 Q. Do you have access to the prior post on
20 Facebook that GOAL has made?

21 A. We should.

22 Q. Would there be a way to check if GOAL made
23 a post seeking plaintiffs for this action?

24 A. We should be able to.

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1 Q. Same thing for Twitter?

2 A. Yes.

3 Q. Did GOAL send any form of email to its
4 members asking if they were interested in
5 participating if an action like this one?

6 A. What's the correct term... Not et al., or
7 not in mass.

8 Q. Did GOAL email any portion of its
9 membership?

10 A. I believe whatever we had was given as part
11 of the process, as part of the documents. So
12 anything that would have been was given.

13 Q. How did people alert GOAL that they may be
14 interested in participating in a case like this one?

15 A. They might contact the staff, myself, Jon
16 Green, Angie, Mike.

17 Q. By telephone typically?

18 A. Telephone, email, text message.

19 Q. Did everyone that expressed an interest
20 ultimately participate as a plaintiff in this case?

21 A. No.

22 Q. How many people contacted GOAL to express
23 interest in participating?

24 A. I don't have that number.

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1 Q. More than ten?

2 A. I honestly don't know.

3 Q. Is there someone at GOAL that would know
4 that?

5 A. No.

6 Q. Did GOAL have any role in evaluating
7 whether a particular person who expressed an
8 interest was appropriately a plaintiff in this case?

9 A. Yes.

10 Q. What was that role?

11 A. It depended upon who was talking to us, and
12 we would try to explain to them the process.

13 Q. Did you ask them questions about their gun
14 ownership?

15 A. No.

16 Q. Were there certain things you were looking
17 for to indicate to you that somebody was
18 appropriately a plaintiff in this case?

19 A. Yes.

20 Q. What were you looking for?

21 A. Somebody who could withstand the process
22 and somebody who lawfully owned firearms.

23 Q. Were you contacted by anyone who you
24 concluded was not a lawful firearm owner?

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1 A. Not to my knowledge.

2 Q. So if I could just ask you about the
3 different individuals who are individuals plaintiffs
4 in this case. Could you tell me whether or not they
5 became plaintiffs because -- after contacting GOAL.

6 A. Sure.

7 Q. Anthony Linden?

8 A. Is that the first one?

9 Q. It's at the top of the page if you want to
10 follow along.

11 A. Oh, okay.

12 Q. I'm just going in order.

13 A. I got it.

14 Q. Was Anthony Linden someone that contacted
15 GOAL about participating in the case?

16 A. Not that I'm aware of.

17 Q. Are you familiar with Mr. Linden?

18 A. No.

19 Q. Do you know how he came to the litigation?

20 A. No.

21 Q. Jason William Sawyer?

22 A. No.

23 Q. You don't know him?

24 A. I don't know him.

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1 Q. You don't know how he came to be involved
2 in the litigation?

3 A. No.

4 Q. Have you ever met him?

5 A. I don't know.

6 Q. Anthony Linden, did you ever meet him?

7 A. I don't know.

8 Q. Andrew Feld, is that someone that contacted
9 GOAL about participating in this litigation?

10 MR. PORTER: It's Nicholas Andrew Feld.
11 He's withdrawn from the suit.

12 You can answer the question if you know the
13 answer.

14 A. Not that I'm aware.

15 Q. Paul Nelson Chamberlain?

16 A. I don't think I know him.

17 Q. Do you know whether any of these
18 individuals had contacted GOAL about participating
19 in a lawsuit like this one?

20 A. They may have.

21 Q. You don't know that any of them didn't
22 contact GOAL, then, either, right?

23 A. That's correct.

24 Q. Did GOAL also solicit gun sellers to

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1 participate in the litigation?

2 A. I don't know if "solicit" is the right
3 term. We certainly spoke to a few.

4 Q. When you spoke to them, what were you
5 trying to find out?

6 A. Basically the same thing, could they
7 withstand the process or are they willing to go
8 through the process.

9 Q. Was On Target Training, Incorporated one of
10 the gun sellers that you spoke with or someone that
11 GOAL spoke with?

12 A. Not that I'm aware of.

13 Q. How about Overwatch Outpost?

14 A. Not that I'm aware.

15 Q. Do you know if any of the plaintiffs are
16 being asked to pay any part of the cost of the
17 litigation?

18 A. I know we are expected to pay some.

19 Q. When you say "we," you mean?

20 A. GOAL.

21 Q. How about the other plaintiffs?

22 A. I don't know.

23 Q. Are you familiar with someone by the name
24 of "Suzanne McComas"?

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1 A. The name does not ring a bell.

2 Q. Are you familiar with someone named "Thomas
3 Bolioli"?

4 A. Yes.

5 Q. Who is Mr. Bolioli?

6 A. I know Tom from Comm2A.

7 Q. Do you know if he had a role in identifying
8 plaintiffs to participate in the litigation?

9 A. I don't know if he had a role in these
10 people.

11 Q. But you know if he had some role in putting
12 the litigation together?

13 A. Yes.

14 Q. When somebody was appropriate for
15 participation in the litigation in the eyes of GOAL,
16 was that person referred to counsel?

17 A. I don't believe we actually came up with
18 individuals through GOAL.

19 Q. You don't believe that GOAL came up with
20 any individuals?

21 A. That made it to that process.

22 Q. Did GOAL refer any people to Comm2A for
23 further evaluation?

24 A. I don't think so.

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1 Q. Do you know if the National Rifle
2 Association had any role in putting this litigation
3 together?

4 MR. PORTER: Object to the form of the
5 question. You can answer if you know the answer.

6 A. Yes.

7 Q. What was their role?

8 A. Basically organizational, and at some point
9 attorneys had to talk to attorneys, putting the
10 complaint together.

11 Q. What about Comm2A, do you know for certain
12 that they had a role in putting the case together?

13 A. In some manner.

14 Q. Do you know what that role was?

15 A. Not specifically.

16 MR. KLEIN: This is a good time for a short
17 break.

18 (Recess at 10:45 a.m.)

19 (Document marked as Wallace
20 Exhibit 2 for identification)

21 BY MR. KLEIN: (10:55 a.m.)

22 Q. Mr. Wallace, you have in front of you a
23 document labeled as Exhibit No. 2. Is that a
24 document that is familiar to you?

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1 MR. GEORGE: How many pages are in this
2 document, please?

3 MR. KLEIN: It's Bates labeled starting
4 with GOAL 00094 and continues consecutively through
5 Page GOAL 000111.

6 MR. GEORGE: So we can assume there are
7 111 minus 93 pages?

8 MR. KLEIN: Yes.

9 MR. GEORGE: So if we did the math, we
10 would know number of pages?

11 MR. KLEIN: Yes.

12 MR. GEORGE: Thank you.

13 MR. PORTER: But we are all lawyers so that
14 will never happen.

15 A. (Examines document) I don't recognize the
16 document as it sits here.

17 Q. Based on your general knowledge, is it a
18 set of PowerPoint slides?

19 MR. GEORGE: That's if you know.

20 A. It could be.

21 Q. Do you know if these are training materials
22 that GOAL has used?

23 A. They could be.

24 Q. Do you understand the fact that there's

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1 Bates numbers at the bottom of each page means that
2 these were documents that were produced by counsel
3 as documents of GOAL?

4 MR. GEORGE: He understands that if you
5 tell him that.

6 Q. I'm asking you if you understand, please.

7 A. No. I don't have that presupposition.

8 Q. Does GOAL typically use training materials
9 in any of its trainings?

10 A. Yes.

11 Q. Does it typically use PowerPoints in any of
12 its trainings?

13 A. Yes.

14 Q. Does the fact that -- the first page, the
15 first rectangle in the upper left corner says, "Gun
16 Owners' Action League" and has a logo on it that
17 says, "GOAL," do you see that?

18 A. Yes.

19 Q. Does that suggest that this is a document
20 that somehow GOAL --

21 MR. GEORGE: It doesn't suggest that every
22 page is the same as the thing in the upper left
23 corner of Page 1.

24 MR. KLEIN: Please don't instruct the

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1 witness.

2 MR. GEORGE: I'm not. I'm objecting that
3 something in the upper left corner of an umpteen
4 page document that says, "GOAL" on it suggests --
5 your word -- that all of these things are GOAL
6 things. I think that's an improper question.

7 MR. KLEIN: Thank you.

8 MR. GEORGE: You can go ahead and answer if
9 you want to.

10 A. Sorry, what was the question?

11 Q. Does the fact that the first rectangle in
12 the upper left-hand corner says, "Gun Owners' Action
13 League" and that there's a name on it that says,
14 "GOAL" in the logo, does that suggest that these
15 were documents that were created by GOAL?

16 MR. PORTER: Objection to form. You can
17 answer the question if you can.

18 A. It could be.

19 Q. Do you know if someone else is using the
20 logo that appears in that box besides GOAL?

21 A. Not that I'm aware.

22 Q. Is that GOAL's logo?

23 A. One of them.

24 Q. If you look at the fourth page which says,

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1 "GOAL 00097," do you see that page?

2 A. Hang on. Yes, I see it.

3 Q. The slide -- well, I don't want to call it
4 a slide because we have not established what this
5 is, but the rectangle in the upper left corner says,
6 "Gun Owners' Action League presents," and then
7 there's a logo that says, "GOAL" in it, do you see
8 that?

9 A. Yes.

10 Q. Is that a logo that GOAL uses?

11 A. Yes.

12 Q. At the bottom of the same page it says,
13 "Gun Law for Citizens," do you see that?

14 A. Yes.

15 Q. Is that a training course that GOAL offers?

16 A. Yes.

17 Q. Does that suggest to you that this is a set
18 of training materials or PowerPoints related to
19 GOAL's Gun Law for Citizens training?

20 MR. PORTER: I object to the form of the
21 question. You can answer the question if you can.

22 A. It could be.

23 Q. But you don't know?

24 A. For a fact, no.

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1 Q. If you could turn to the page labeled
2 GOAL 000108. It says in that top rectangle, "Gun
3 Owners' Action League." Again, there's that same
4 logo that we saw on the first page. Do you see
5 that?

6 A. Yes.

7 Q. Under that it says, "An Overview of
8 Massachusetts Gun Laws, Revised 2017," do you see
9 that?

10 A. Yes.

11 Q. Is this Overview of Massachusetts Gun Laws
12 a training that GOAL offers?

13 A. It could be.

14 Q. But you don't know?

15 A. Not having reviewed it all.

16 Q. Well, take some time and review it, and
17 answer the question if you can.

18 A. (Examines document) It appears to be the
19 slide show that Jon Green would use for the course,
20 yes.

21 Q. So your belief is that the material
22 starting on Page 000108 is material that Mr. Green
23 uses to present a training called "An Overview of
24 Massachusetts Gun Laws"?

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1 A. Yes.

2 Q. Is that a training that you ever offered
3 yourself?

4 A. Once.

5 Q. Did you use these training materials?

6 A. I don't think I used these.

7 Q. Did you use similar training materials?

8 A. It would be similar because they would
9 cover the same set of laws.

10 Q. Was it a PowerPoint presentation?

11 A. Yes.

12 Q. Let's go back to the first page. The top
13 rectangle, again, it says at the bottom, "Gun
14 Owners' Action League, Introduction to the Modern
15 Sporting Rifle." Is Introduction to the Modern
16 Sporting Rifle a training that GOAL has offered?

17 A. Yes.

18 Q. Do these appear to be training materials
19 associated with that training?

20 A. I have not actually ever reviewed the
21 training materials for that course.

22 Q. Have you ever been the trainer in a
23 training called "Introduction to the Modern Sporting
24 Rifle"?

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1 A. No.

2 Q. That would always be Mr. Green?

3 A. Yes.

4 Q. Let's go back to 00097. Again, that top
5 rectangle says, "Gun Law for the Massachusetts
6 Resident 2017"?

7 A. Right.

8 Q. Below that it says, "Jon Green, Director of
9 Education and Training," do you see that?

10 A. Yes.

11 Q. Does that suggest to you that these are
12 training materials used by Mr. Green in connection
13 with the training on behalf of GOAL called "Gun Law
14 for the Massachusetts Resident"?

15 MR. PORTER: Objection to form. You can
16 answer.

17 A. They certainly could be.

18 Q. But you don't know?

19 A. These change quite often.

20 Q. Meaning they would have been used at one
21 time but may not be the materials currently in use?

22 A. They could have, either way.

23 Q. If we could go back to Exhibit 1 for a
24 second.

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1 A. This one (indicating)?

2 Q. Yes. Would you turn to Page 4, please.

3 A. I'm there, Page 4.

4 Q. Could you read the material after No. 9 on
5 that page.

6 A. (Examines document)

7 Q. Have you read it now?

8 A. Yes.

9 Q. Does No. 9 say, "The firearms training
10 provided by the Plaintiff"?

11 A. Yes.

12 Q. Is that a topic that you are here to
13 testify about today?

14 A. Yes, I assume.

15 Q. Have you familiarized yourself with the
16 training materials that were produced to us by GOAL
17 and are now in front of you as Exhibit 2?

18 A. I would have to say I did not in this case,
19 in Exhibit 2.

20 Q. Meaning you did not review it as part of
21 your planning for this deposition?

22 A. Correct.

23 Q. You said earlier that GOAL has offered a
24 training called "Introduction to the Modern Sporting

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1 Rifle"; is that right?

2 A. That's correct.

3 Q. Is that a training that GOAL frequently
4 offers?

5 A. Maybe two or three times a year.

6 Q. Is Mr. Green always the trainer for that
7 training?

8 A. To the best of my knowledge.

9 Q. Have you ever been the trainer for that
10 training?

11 A. No.

12 Q. As you look through this material, the
13 pages in front of you marked as Exhibit 2, did you
14 see anything that you believe is not part of
15 Mr. Green's training materials?

16 MR. PORTER: Objection to the form of the
17 question. You can answer if you know the answer to
18 that, though, Jim.

19 A. Having not reviewed the material, I cannot
20 answer the question factually.

21 Q. Let's start with the first page,
22 Page 00094. Would you review that, please.

23 MR. GEORGE: I take it you are asking him
24 to look at all six things on that page?

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1 MR. KLEIN: Yes.

2 A. (Examines document) Okay.

3 Q. There is a picture of a gun in the
4 rectangle in the top left-hand corner, do you see
5 that?

6 A. Yes.

7 Q. What type of gun is that?

8 A. It appears to be an AR-15 platform.

9 Q. When you use the term "AR-15 platform," do
10 you mean a gun that is built on the AR-15 platform?

11 A. Yes.

12 Q. Is there more than one gun built on the
13 AR-15 platform?

14 A. I would say there are many.

15 Q. Could you give us a list.

16 A. I believe Sig makes one that is close.

17 Q. Do you know the model name of the Sig gun
18 that you are referring to?

19 A. No.

20 Q. Could it be the Sig Sauer M-400?

21 MR. PORTER: I object to the form of the
22 question. He said he didn't know.

23 You can answer.

24 A. It could be.

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

4 Q. Is it fair to say guns that are built on
5 the AR-15 platform are often referred to in the gun
6 community as "AR-15s"?

7 MR. PORTER: I object to the form of the
8 question. You can answer if you know.

9 A. Yes.

10 Q. Are you familiar with a gun called the
11 "AK-47"?

12 A. Yes.

13 Q. Is that typically the shorthand name for a
14 gun called the "Avtomat Kalashnikov 47"?

15 A. I suppose.

16 MR. PORTER: Hold on. Yes or no. Answer
17 the question. If you know it, answer it. If you
18 don't, say "I don't know."

19 A. Yes.

20 Q. The answer is yes?

21 A. Yes.

22 Q. Do you know if there are other guns built
23 in the same platform as the AK-47?

24 A. There are probably several that could be

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1 determined as being built off that platform.

2 Q. Can you give me any examples?

3 A. SKS.

4 Q. That's a gun that would be an AK-47
5 platform gun?

6 A. It's very similar in design.

7 Q. Any other guns that you can think of?

8 A. Not off the top of my head.

9 Q. Does Romanian Arms build a gun that's built
10 on the AK-47 platform?

11 A. I don't know.

12 Q. Is it fair to say that the guns built on
13 the AK-47 platform are typically referred to in the
14 gun-owning community as "AK-47s"?

15 MR. PORTER: I object to the form of the
16 question. You can answer if you know.

17 A. Not typically.

18 Q. What would they be called?

19 A. AKs.

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 (Documents marked as Wallace
10 Exhibits 3-4 for identification)

11 Q. You have in front of you a document labeled
12 as Exhibit 3. The Bates number on it is GOAL
13 000162. It runs through GOAL 000164.

14 A. (Examines document)

15 Q. Have you had the chance to review that
16 document?

17 A. Yes.

18 Q. Do you know what it is?

19 A. It looks like a copy of a page of our
20 website.

21 Q. Is that currently a page that is on your
22 website?

23 A. I do not know if it's been changed since
24 this was copied.

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1 Q. Were you involved at all in identifying it
2 on your website as something that would be
3 responsive to the request for production of
4 documents in this matter?

5 A. Yes. Under instruction, my staff was
6 instructed to get anything they could that would
7 meet the requirements.

8 Q. Were they actually looking at pages on the
9 website?

10 A. Yes.

11 Q. So at the time this was produced, it was
12 present on your website?

13 A. More than likely.

14 Q. It says at the top, if I read it correctly,
15 "Understanding 'assault weapons' and 'large capacity
16 weapons'"; is that right?

17 A. Yes.

18 Q. Is this something that you would have
19 prepared for inclusion on GOAL's website personally?

20 A. Most of the things, it's a joint effort
21 with the staff.

22 Q. So some combination of GOAL's staff
23 prepared this?

24 A. Yes.

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1 Q. Were you involved in preparing it?

2 A. More than likely.

3 Q. Did you review it before it was placed on
4 the website to the best of your recollection?

5 A. This particular page I could not say yes or
6 no. I don't know.

7 Q. Is there anything on here, based on your
8 review this morning, that you consider incorrect?

9 A. After a quick review, no.

10 Q. Go ahead and take as much time as you need.

11 MR. GEORGE: You are asking him to just
12 read the first page?

13 MR. KLEIN: He can read the whole document
14 if he needs to.

15 MR. GEORGE: Well, you said, Would you read
16 it. Are you asking him to read all the pages in the
17 exhibit?

18 MR. KLEIN: Whatever review he needs to do
19 he should do.

20 A. (Examines document) It seems accurate.

21 Q. You don't see anything in here that you
22 believe to be inaccurate?

23 A. I don't.

24 Q. Would you turn to Exhibit 4 now. The Bates

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1 label on that document is GOAL 000171 and 000172 and
2 000173.

3 A. (Examines document)

4 Q. Have you had the chance to review this
5 document?

6 A. Okay.

7 Q. Have you had the chance to review it?

8 A. Yes.

9 Q. Is this to the best of your knowledge
10 material that appeared on GOAL's website at the time
11 it was produced to us?

12 A. Yes.

13 Q. Did you have any role in preparing this
14 document?

15 A. I don't believe so.

16 Q. Do you know if you reviewed it before it
17 appeared on the website?

18 A. I don't recall.

19 Q. Is there anything in this document that you
20 believe to be inaccurate?

21 MR. GEORGE: Which exhibit number are you
22 referring to now, please?

23 MR. KLEIN: Exhibit No. 4.

24 MR. GEORGE: Thank you.

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1 A. It says it's a column of some sort. I'm
2 not sure accuracy would apply to it as, say, with a
3 training course.

4 Q. Is there any factual information in here
5 that you believe to be inaccurate?

6 A. There does not appear to be.

7 Q. Are you familiar with the term "large
8 capacity magazine"?

9 A. Yes.

10 Q. What does that term refer to?

11 A. Under Massachusetts law, it would refer to
12 magazines for a rifle or pistol that hold more than
13 10 and for a shotgun hold more than 5.

14 Q. When you say "hold more than 10," you mean
15 hold more than 10 rounds?

16 A. Yes.

17 Q. And by "more than 5," you mean more than
18 5 rounds?

19 A. Yes.

20 Q. Do you happen to own any large capacity
21 magazines?

22 A. Yes.

23 Q. When did you acquire it?

24 A. 2001.

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1 Q. Was it your understanding when you acquired
2 it that the magazine you acquired was manufactured
3 before 1998?

4 A. Yes.

5 MR. KLEIN: We can take a very short break.
6 I want to confer with my colleagues. I may be able
7 to wrap this up very soon.

8 (Recess at 11:27 a.m.)

9 BY MR. KLEIN: (11:35 a.m.)

10 Q. Mr. Wallace, when did GOAL first become
11 aware of the Enforcement Notice?

12 A. Sometime in the morning of the 20th is when
13 I got a phone call.

14 Q. Who did you get the phone call from?

15 A. I found a message on my machine from
16 Michael Firestone, I believe was the name.

17 Q. Do you know if he's an employee of the
18 Attorney General's Office?

19 A. Yes.

20 Q. Do you know what his position is?

21 A. I thought he was chief of staff, but I
22 really don't know the answer to that.

23 Q. What did he tell you in that message?

24 A. Just that they were having a press release

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1 about an enforcement notice on assault weapons.

2 Q. Did you get a copy of it?

3 A. Not actually. At that point, I actually
4 had to go to the office, which took me an hour or so
5 to get there.

6 Q. At GOAL?

7 A. Yes.

8 Q. Was there a copy of the press release there
9 for you?

10 A. We finally got ahold of one, yes.

11 Q. Did you get a copy of the Enforcement
12 Notice as well?

13 A. Yes.

14 Q. When you got a copy of the Enforcement
15 Notice, did you read it?

16 A. We read through it several times.

17 Q. Did you read the press release as well?

18 A. I assume we did.

19 Q. At some point GOAL began posting
20 information about the Enforcement Notice on its
21 website; is that right?

22 A. Yes.

23 Q. At what point was that, if you remember?

24 A. I don't remember.

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1 Q. Do you know if anything was posted the same
2 day, on July 20, 2016?

3 A. I don't remember because our director of
4 communications was on vacation that week.

5 Q. And how does that affect your memory?

6 A. Only because I don't remember exactly when
7 we got ahold of him to try to get some type of alert
8 up on the page.

9 Q. So he would have had to actually put the
10 alert on the page?

11 A. I believe he is the only one that has
12 access to do so.

13 Q. You don't remember if that was the same day
14 or a day later or two days later?

15 A. I don't recall.

16 Q. Would you be able to track on the website
17 the date on which the first material GOAL posted
18 about the Enforcement Notice appeared?

19 A. I don't know. I'm not familiar with that
20 technology.

21 Q. Who would know that?

22 A. Our director of communications may be able
23 to help with that.

24 MR. KLEIN: I don't have any further

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1 questions.

2 MR. PORTER: We have no questions.

3 MR. KLEIN: I just want to state briefly on
4 the record there are some concerns about this
5 witness not being prepared to respond to matters
6 that were within the scope of the 30(b)(6) notice in
7 this matter. Most particularly, we had a series of
8 questions about firearms trainings provided by GOAL.
9 The witness acknowledged he is not familiar with the
10 PowerPoints that were used in some of the trainings
11 GOAL provides. For that reason we reserve the right
12 to reopen this deposition in order to get responses
13 to those questions.

14 MR. PORTER: Okay. Obviously you can
15 reserve the right to do that if you would like. Our
16 position is that you didn't ask any substantive
17 questions about firearms training that he had the
18 opportunity to answer. You asked him about the
19 slides or the images on the paper. If you want a
20 stipulation from us that these are -- you know, to
21 authenticate these and use them that way, we can do
22 that. I mean, GOAL produced these documents.

23 His familiarity with GOAL's training I
24 don't think was really plum during your deposition.

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1 MR. KLEIN: So would that stipulation
2 include that the material on that document, Exhibit
3 No. 2, are used by GOAL in training?

4 MR. PORTER: Well, sitting here right now I
5 can't give you the full scope of the stipulation. I
6 would be willing to take a look at these and talk to
7 my client. In very short order we can answer the
8 question.

9 MR. KLEIN: Would it include the
10 stipulation that GOAL believes the information
11 presented in the slides is accurate?

12 MR. PORTER: That would be a
13 question-by-question basis. I mean, some of the
14 stuff would be technical. That would be easy to
15 stipulate to. Some may be opinion based or
16 political, and that would be less susceptible to
17 stipulation.

18 MR. KLEIN: Again, we reserve our rights.
19 It's possible we could resolve this by stipulation.

20 MR. PORTER: I understand.

21 (Whereupon the deposition
22 was suspended at 11:39 a.m.)
23
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C E R T I F I C A T E

I, JAMES L. WALLACE, do hereby certify that I have read the foregoing transcript of my testimony, and further certify under the pains and penalties of perjury that said transcript (with/without) suggested corrections is a true and accurate record of said testimony.

Dated at _____, this ____ day of _____, 2017.

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
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[illegible]

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 12th day of
6 September, 2017, at 9:59 a.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 26th day of
21 September, 2017.

22

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Under Federal Rule 30:
X Reading and Signing was requested
Reading and Signing was waived
Reading and Signing was not requested



Notary Public
Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 9
TO KAPLAN DECLARATION

In The Matter Of:

David Seth Worman, et al. vs.

Maura Healey, et al.

Edward O'Leary

Vol. I

September 14, 2017



**DORIS O. WONG
ASSOCIATES, INC.**

C O U R T R E P O R T E R S

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Original File O'LEARY_Edward.txt

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF ON TARGET TRAINING, INC.,
THROUGH ITS DESIGNEE EDWARD O'LEARY, a witness
called on behalf of the Defendants, taken pursuant
to Rule 30(b)(6) of the Federal Rules of Civil
Procedure, before Ken A. DiFraia, Registered
Professional Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the Office of
the Attorney General, 100 Cambridge Street, Boston,
Massachusetts, on Thursday, September 14, 2017,
commencing at 9:39 a.m.

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* * * * *

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
EDWARD O'LEARY				
BY MR. KROCKMALNIC	4			

* * * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Copy of Notice of Taking Deposition of Plaintiff On Target Training, Incorporated	10
Exhibit 2	Copy of Requests for Production of Documents	95

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P R O C E E D I N G S

EDWARD O'LEARY

a witness called for examination by counsel for the Defendants, having been satisfactorily identified by the production of his driver's license and being first duly sworn by the Notary Public, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KROCKMALNIC:

Q. Morning. My name is Dan Krockmalnic. I'm an Assistant Attorney General. I'm joined today by Elizabeth Kaplan, also an Assistant Attorney General. We represent the Defendants in this case, Worman versus Baker.

Could you please state your name, spell it, and state your home and business addresses for the record.

MR. PORTER: Sorry to interrupt. The usual stipulations? The Federal Rules of Civil Procedure?

MR. KROCKMALNIC: I was going to get there.

MR. PORTER: Sorry.

MR. KROCKMALNIC: No worries at all. How do you define the usual stipulations?

MR. PORTER: What we've been doing is

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1 proceeding under the Federal Rules. That's
2 satisfactory to the Plaintiffs. If that's how you
3 would like to proceed, we are happy to proceed
4 accordingly.

5 MR. KROCKMALNIC: That's acceptable.

6 MR. PORTER: Primarily, for the purposes of
7 the deposition, all objections, except as to the
8 form of the question, are reserved.

9 MR. KROCKMALNIC: Until the time of trial?

10 MR. PORTER: Right.

11 MR. KROCKMALNIC: Agreed.

12 Q. Would you like me to restate the question?

13 A. Please.

14 Q. Please state your name, spelling your name,
15 and please state your home and business addresses
16 for the record.

17 A. My name is Edward O'Leary. [REDACTED]

[REDACTED]

[REDACTED] My business address is 516 North
20 Bedford Street in East Bridgewater, Massachusetts.

21 Q. Mr. O'Leary, have you ever been deposed
22 before?

23 A. I have.

24 Q. How many times have you been deposed before?

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1 A. More than once.

2 Q. Do you know how many times?

3 A. I don't.

4 Q. Approximately?

5 A. I don't have an answer. I don't know.

6 Q. Can you tell me the situations, the matters
7 in which you were deposed before.

8 A. I was deposed relative to my job as a
9 police officer in Randolph. I was deposed on one
10 case where a young boy had accidentally hung himself
11 and died. I was deposed in another case where a
12 person was suing me. Those are the three that come
13 to mind.

14 Q. Am I right to understand that the situation
15 when you were deposed with respect to the boy who
16 hung himself was also in the capacity of your duties
17 as a police officer?

18 A. Yes.

19 Q. Were you deposed as a fact witness in that
20 case?

21 A. (No response)

22 Q. I can restate that question. Were you a
23 party to that case?

24 A. I was not a party to the case.

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1 Q. The second time you recall being deposed is
2 when someone had sued you; is that correct?

3 A. That's correct.

4 Q. What was the nature of that lawsuit?

5 A. I'm not sure of the order, but false
6 arrest, tortious assault and battery, excessive
7 force, the litany that would go along with that.

8 Q. And I take it that was also arising out of
9 the course of your employment as a police officer?

10 A. It was.

11 Q. Do you recall approximately what year that
12 case was brought against you?

13 A. Maybe '87, '88.

14 Q. So approximately 30 years ago?

15 A. Yes.

16 Q. Do you recall how that case was resolved?

17 A. We won in a jury trial.

18 Q. Who is "we"?

19 A. There was another officer. The town was
20 sued. I think that was it.

21 Q. Which town was this?

22 A. Randolph.

23 Q. Is that the town in which you served as a
24 police officer at the time?

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1 A. Yes.

2 Q. Do you still serve as a police officer for
3 the Town of Randolph?

4 A. No.

5 Q. When did you stop serving as a police
6 officer for the Town of Randolph?

7 A. Five years ago.

8 Q. Apart from those two situations that you
9 recall being deposed, as you sit here today, do you
10 recall any other times you were deposed?

11 A. I can't separate it in my mind between
12 depositions, Grand Jury. I mean, I was in court all
13 the time.

14 Q. Were there any instances when you testified
15 before the Grand Jury that were not in the course of
16 duties in your performance as a police officer for
17 the Town of Randolph?

18 A. No.

19 Q. Have you ever testified at trial?

20 A. Yes.

21 Q. Ever testify at trial apart from in the
22 course of your duties as a police officer for the
23 Town of Randolph?

24 A. No.

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1 Q. So since it sounds as though it might have
2 been some time ago, I want to go over some ground
3 rules for today's deposition to make sure we're on
4 the same page. Is that alright?

5 A. Sure.

6 Q. If a question is unclear, please ask me to
7 rephrase. It's my job to ask clear questions. Do
8 you understand that?

9 A. Yes.

10 Q. Is it fair to say that if you don't ask me
11 to rephrase, that you will have understood the
12 question?

13 A. Yes.

14 Q. I would also ask you to wait until I finish
15 asking the full question so that Ken can give us a
16 clear record. Do you understand that?

17 A. Yes.

18 Q. And you understand that Ken can't take down
19 nods of the head or shakes of the head or any
20 gestures? Yes, exactly like the one you just --

21 A. I do.

22 Q. You just violated the
23 wait-until-the-end-of-the-question rule.

24 A. Sorry.

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1 Q. No worries. Of course, you understand you
2 are represented today by Mr. Porter?

3 A. I do.

4 Q. You understand that if Mr. Porter objects,
5 as is his right, please allow him to finish his
6 objection, and he will tell you at the end of that
7 objection as to whether you are allowed to answer or
8 whether he is instructing you not to answer the
9 question; do you understand that?

10 A. Yes.

11 Q. If you need a break at any time, don't
12 hesitate to ask for one. The only thing I would ask
13 is that you don't take a break while a question is
14 pending. Do you understand that?

15 A. Yes.

16 Q. You understand that you've been sworn in by
17 Ken and that you are obligated to answer each
18 question truthfully and that your testimony is under
19 the pains and penalties of perjury?

20 A. Yes.

21 (Document marked as O'Leary

22 Exhibit 1 for identification)

23 Q. Mr. O'Leary, I'm handing you what was
24 marked as Exhibit 1 for identification. Take your

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1 time to review it. If you would then let me know
2 when you have done so.

3 A. (Examines document) Okay.

4 Q. You have reviewed the document?

5 A. I have.

6 Q. Do you recognize this document?

7 A. I do.

8 Q. What do you recognize the document to be?

9 A. This is the Notice of Taking Deposition of
10 Plaintiff On Target Training, Incorporated.

11 Q. Have you seen this document prior to today?

12 A. I have.

13 Q. Were you shown it by your counsel?

14 A. I was.

15 Q. Please turn to the third page of the
16 document. The header Schedule A, tell me when you
17 are there, please.

18 A. I'm there.

19 Q. Great. Do you see the writing says, "The
20 Plaintiff's designee(s) shall be prepared to respond
21 to questions relating to the following topics," and
22 then that page and the page following there are
23 15 enumerated topics; do you see those?

24 A. I do.

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1 Q. Do you understand that your testimony today
2 is on behalf of Plaintiff On Target Training and
3 that your testimony with respect to those 15 topics
4 is on behalf of On Target and binds that company?

5 A. Yes.

6 Q. Thank you. Mr. O'Leary, where are you
7 currently employed?

8 A. On Target Training, Incorporated.

9 Q. What is the nature of the business of On
10 Target Training, Incorporated?

11 A. Retail gun store, training facility,
12 firearms accessories, ammunition, sales.

13 Q. Would you agree with me that if we refer to
14 On Target Training, Incorporated throughout today's
15 deposition as simply "On Target," we will understand
16 what we are talking about as specifically On Target
17 Training, Incorporated?

18 A. Yes.

19 Q. What do you do at On Target?

20 A. Everything. I own the place.

21 Q. Are you the sole owner of On Target?

22 A. I am.

23 Q. Do you have any employees at On Target?

24 A. I actually do. My wife and my daughter are

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1 employees.

2 Q. They are both on the payroll in some form?

3 A. Yes.

4 Q. Salaried or hourly?

5 A. Salaried.

6 Q. Both of them?

7 A. Both.

8 Q. What is your wife's name?

9 A. Susan.

10 Q. Susan O'Leary?

11 A. Yes.

12 Q. And your daughter?

13 A. Shannon.

14 Q. Shannon O'Leary?

15 A. Yes.

16 Q. Do you have any other employees at On
17 Target apart from your wife and your daughter?

18 A. No.

19 Q. How long have you been operating the
20 business of On Target?

21 A. In its current situation as a corporation,
22 for about five years. Prior to that I was just a
23 sole proprietor and it was a part-time thing,
24 probably since about 1998.

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1 Q. Did you open up On Target in 1998?

2 A. Yes.

3 Q. Is there anything you want to elaborate on
4 with respect to that answer?

5 A. Yes.

6 Q. What is the reason for which you changed
7 the legal structure of On Target approximately five
8 years ago?

9 A. When I retired from the police department
10 and I obtained my Federal firearms dealer's license
11 and my state firearms dealer's license, I wanted to
12 be incorporated to provide a layer of protection.

13 Q. To whom?

14 A. To me.

15 Q. What type of protection were you seeking?

16 A. Liability.

17 Q. What forms of liability were you worried
18 about?

19 A. Civil liability.

20 Q. What were the reasons you were worried
21 about civil liability?

22 A. Just because everybody sues everybody these
23 days.

24 Q. Prior to changing the legal form of On

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1 Target to a corporation status, you stated it was a
2 sole proprietorship?

3 A. Yes.

4 Q. And you were the sole owner?

5 A. Yes.

6 Q. For how long was On Target a sole
7 proprietorship? From 1998 until approximately 2012?

8 A. Yes.

9 Q. Prior to 1998, did On Target exist?

10 A. No.

11 Q. So you opened up the shop in 1998?

12 A. Well, not the shop, no, just the business.
13 I didn't have a shop until 2012.

14 Q. So from 1998 through 2012, what was On
15 Target?

16 A. Training facility, firearms training. I
17 used to sell other products, not firearms, at gun
18 shows. I didn't start selling firearms until I had
19 a business address and a lease and the proper zoning
20 and all that.

21 Q. You currently have a storefront?

22 A. I do.

23 Q. Prior to 2012, there was no storefront for
24 On Target?

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1 A. Correct.

2 Q. What was the nature of the products that
3 you sold through On Target at gun shows and
4 elsewhere prior to 2012?

5 A. Firearms accessories, cleaning kits,
6 holsters, ammunition, pepper spray, just general
7 firearms accessories.

8 Q. You mentioned a training facility. Could
9 you please explain, what was the nature of the
10 training facility?

11 A. Well, maybe "facility" is not the right
12 word. I was a training organization. I would go to
13 people's homes, teach them at gun clubs. We would
14 do halls. Oh, the community college.

15 Q. What about the community college?

16 A. We taught at the community college. We
17 taught basic firearms safety.

18 Q. Which college?

19 A. Massasoit.

20 Q. What does it mean to do halls?

21 A. Rent a hall or use a hall like the Elks
22 Hall. We once rented a hotel hall at the Holiday
23 Inn. A lot of homes, mostly gun clubs.

24 Q. For which purpose or purposes did you rent

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1 or do halls?

2 A. To teach basic firearms safety.

3 Q. Are you currently employed anywhere else
4 apart from On Target at the moment?

5 A. No.

6 Q. You stated that you stopped working for the
7 Town of Randolph as a police officer approximately
8 five years ago; is that correct?

9 A. Correct.

10 Q. Did you retire from the Town of Randolph?

11 A. I did.

12 Q. For approximately how many years did you
13 serve as a police officer?

14 A. 32 years and 2 days.

15 Q. I appreciate the specificity. Was there
16 any specific reason that you chose to retire from
17 the Town of Randolph as a police officer after
18 32 years and 2 days?

19 A. I had hit the magic numbers, 32 years and
20 55 years of age. I was at the maximum pension. It
21 was time to go.

22 Q. Were all 32 years and 2 days of your
23 service as a police officer for the Town of
24 Randolph?

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1 A. No.

2 Q. What other town or cities did you serve as
3 a police officer for?

4 A. I worked for about a year in Marshfield.

5 Q. Was that prior to working as a police
6 officer for Randolph?

7 A. No.

8 Q. Was that during the term of your 32 years
9 at Randolph?

10 A. That was during the time of
11 Proposition 2 1/2. In 1981 I was laid off from the
12 police department in Randolph because they reduced
13 the number of officers on the force, along with
14 several other people. I had the good fortune of
15 being able to get appointed in Marshfield. I worked
16 there for a year, close to a year, until Randolph
17 re-called. Then I went back to Randolph.

18 Q. So it was approximately 1982 or so?

19 A. Yes.

20 Q. When did you start working as a police
21 officer for the Town of Randolph?

22 A. 1980.

23 Q. And you retired in 2012?

24 A. Yes.

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1 Q. Do you remember what date you retired?

2 A. September 30th.

3 Q. I figured you just might remember that.

4 A. I was appointed on September 28th, and so
5 that's the two days.

6 Q. What rank did you attain as a police
7 officer for Randolph?

8 A. My highest civil service rank was
9 lieutenant. I was on some occasions assigned as
10 acting chief when the chief was out of town.

11 Q. Within the Town of Randolph's police
12 department, are there any ranks in between that of
13 lieutenant and that of chief?

14 A. Yes. There's the rank of commander.

15 Q. Could you please explain how it came to
16 pass that from time to time you were the acting
17 chief.

18 A. That was before the commanders existed.

19 Q. Is it fair to say that when you were
20 serving in those moments as acting chief, you were
21 otherwise the number two at the Randolph Police
22 Department?

23 A. No. There was the chief, and there was all
24 the braves, the rest of us. It depended on which

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1 chief it was. I was a lieutenant. He asked me to
2 do it so I did it.

3 Q. Does the Town of Randolph have the rank of
4 captain?

5 A. No.

6 Q. During the course of your employment as a
7 police officer either for the Town of Randolph or
8 the Town of Marshfield from 1980 through 2012, did
9 you hold any other jobs?

10 A. On the police department?

11 Q. No, apart from serving as a police officer
12 for those two towns.

13 A. I did.

14 Q. What jobs were those?

15 A. I was on the adjunct faculty at Anna Maria
16 College, and I was on the adjunct faculty at
17 Massasoit Community College.

18 Q. Where is Anna Maria College located?

19 A. The main campus is in Paxton,
20 Massachusetts. It's 1 Sunset Lane, if that helps.

21 Q. It does. Massasoit Community College,
22 where is that located?

23 A. Brockton, Massachusetts.

24 Q. What did you teach as an adjunct faculty

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1 member at those two colleges?

2 A. The criminal justice curriculum, almost
3 everything they had at one time or another.

4 Q. Can you please help me understand what the
5 criminal justice curriculum comprises.

6 A. Criminal Law I, Constitutional Law I,
7 Evidence and Court Procedure, Police Community
8 Relations, Corrections, Probation and Parole.
9 There's probably more.

10 Q. Were you teaching Massachusetts law,
11 Federal law, both, something else?

12 A. Kind of a generic. It was not statute
13 specific, state specific. It was basic.

14 Q. Could you please help me understand what
15 you mean by "basic."

16 A. It would be freshman level criminal law, an
17 introduction to criminal law. The difference
18 between felonies and misdemeanors, the difference
19 between criminal law and other law that is not
20 criminal, the definition of custody, some on use of
21 force. I don't have a copy of the syllabus, so...

22 Q. For what years did you serve as an adjunct
23 faculty member at Anna Maria and Massasoit Colleges?

24 A. At Massasoit it was from 1989 until 2012.

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1 For Anna Maria it was in the '90s. They had an off
2 campus program much closer to home. I taught there.

3 I also taught in the police academy.

4 Q. Where was that?

5 A. The one I taught in was in Foxborough. I
6 don't think I taught in any other ones.

7 Q. Do you recall the name of the police
8 academy?

9 A. I do. It was the South Suburban Police
10 Institute, and it was the Municipal Police Training
11 Committee. Yes, I was in Foxborough.

12 Q. What did you teach there?

13 A. I think I taught -- I'm trying to remember
14 now. I think it was Evidence. I think it was --
15 that's a long time ago. I know Evidence was in
16 there. I don't remember what else.

17 Q. You said it was a long time ago. When did
18 you teach at the South Suburban Police Institute?

19 A. Again, starting around '89, probably for
20 five or six years. It was off and on. It was not a
21 full-time thing.

22 Q. What were your titles at Massasoit
23 Community College and at Anna Maria College?

24 A. Adjunct faculty. Most people just called

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1 me "Ed."

2 Q. Apart from what we discussed regarding your
3 time as a police officer for Randolph and for
4 Marshfield and your time teaching at Massasoit and
5 Anna Maria and at South Suburban Police Institute,
6 can you please walk me through what other employment
7 you have had.

8 A. Oh, god, you mean like in high school?

9 Q. No. Well, let's start with 1980 onward.

10 A. 1980 onward?

11 Q. Yes, anything else that you have not
12 mentioned thus far.

13 A. In the interim period from the time I was
14 laid off from Randolph until the time I began
15 working in Marshfield, I sold parts for foreign cars
16 for a company called "Foreign Auto Part."

17 Q. Where were they located?

18 A. In Sharon, Mass.

19 Q. Is there anything else that you can recall
20 as you sit here? I understand it was a long time
21 ago.

22 A. From '80 on, no.

23 Q. Would you please briefly walk me through
24 your education.

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1 A. I have an associate's degree in law
2 enforcement from Massasoit Community College. I
3 have a bachelor of arts degree in criminal justice
4 from Western New England College. I have a master
5 of arts in criminal justice from Anna Maria College.

6 Q. Can you help me understand how the degree
7 programs differ from on the one hand the associate's
8 degree in law enforcement at Massasoit and on the
9 other the criminal justice programs at Western New
10 England and the master's program at Anna Maria
11 College.

12 A. It's just what they called it.

13 Q. Roughly the same curriculum?

14 A. Yes.

15 Q. How would you describe that curriculum?

16 A. Massasoit is a two-year community college.
17 You cannot get a bachelor's degree there. You take
18 your first two years of undergrad there basically,
19 and you can either be in a degree program or you can
20 be in a transfer program. I took the degree
21 program. When you graduate with that, that
22 transfers to most schools as 60 undergraduate
23 credits, which is halfway to a bachelor's degree.
24 Then you take your third and fourth year at the

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1 other school, and then you get your bachelor's
2 degree.

3 Q. So you started at Massasoit first?

4 A. Well, I had credits at Northeastern. I had
5 credits at UMass, here and there different things.
6 I got three college credits for English just for
7 taking a test at UMass. They called them
8 "competencies," but it worked out to three credits.

9 Q. UMass Boston, Amherst, Dartmouth?

10 A. Boston, in Dorchester.

11 Q. Have you ever served in the military?

12 A. No.

13 Q. Have you ever been tried for or convicted
14 of a crime?

15 A. I've never been convicted of a crime.

16 Q. Were you tried for a crime?

17 A. Actually, no.

18 Q. Are you thinking back to the time you were
19 deposed in the lawsuit that you mentioned earlier
20 today?

21 A. No, that's not what I'm thinking of at all.

22 Q. Going back to that lawsuit when you were
23 deposed, was that a civil lawsuit against you?

24 A. It was.

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1 Q. Were you ever tried criminally yourself?

2 A. For that?

3 Q. No, no, at any point.

4 A. I never was in a trial.

5 Q. Were you ever arrested or arraigned as a
6 defendant in a criminal proceeding?

7 MR. PORTER: I object to the form of the
8 question. You can answer.

9 MR. KROCKMALNIC: I'm happy to rephrase.

10 Q. Were you ever arraigned as a defendant in a
11 criminal proceeding?

12 A. I was.

13 Q. Can you tell me, what were the
14 circumstances for which you were arraigned as a
15 defendant in a court proceeding?

16 A. I was arraigned for some disturbance. I
17 don't know what the exact charge was. It was in the
18 '70s. The case was dismissed.

19 Q. Where was this?

20 A. In Boston.

21 Q. City of Boston?

22 A. Yes.

23 Q. Where were you arraigned, do you recall?

24 A. No.

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1 Q. Do you recall anything as you sit here
2 today about the nature of the disturbance?

3 A. I was never really clear on what the
4 disturbance was. I was present, but I was not
5 disturbing.

6 Q. What were you present at?

7 A. It was at a Red Sox game.

8 Q. Was there a complainant in that case?

9 A. I have no idea.

10 Q. By whom were you arrested?

11 A. Well, at some point I guess it was the
12 Boston Police.

13 Q. As you sit here today, what do you recall
14 about the circumstances that led to your arrest at a
15 Red Sox game?

16 A. Nothing, nothing.

17 Q. Apart from the case being dismissed, what,
18 if anything, do you recall about the nature of the
19 proceedings against you relating to that arrest?

20 A. It was dismissed in the morning.

21 Q. Do you recall the reason or reasons for
22 which it was dismissed?

23 A. Because we were out of there. Everybody
24 was gone. They took away people, guys. They just

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1 took a bunch of guys away.

2 Q. "They" meaning Boston PD?

3 A. I think it was really the security. I'm
4 not sure. I mean, the police obviously came at some
5 point and got involved, but I don't know. I don't
6 remember. It was a long time ago.

7 Q. Apart from this incident to which you've
8 just been testifying, have you ever been arrested at
9 any point?

10 A. Yes. I had an OUI too in the '70s. It was
11 dismissed.

12 Q. Apart from that incident, were there any
13 other circumstances in which you've been arrested?

14 A. No.

15 Q. Have you ever been involved in any domestic
16 violence incident?

17 A. Outside of the police?

18 Q. Exactly. As an individual, not in the
19 course of your duties as a police officer.

20 A. No.

21 Q. How long have you lived in Massachusetts?

22 A. My whole life.

23 Q. How old are you?

24 A. I am 61.

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1 Q. Mr. O'Leary, do you hold any gun license or
2 licenses?

3 A. I do.

4 Q. Could you please walk me through what
5 licenses you own.

6 A. I have a license to carry firearms, a
7 Class A.

8 Q. Any restrictions on it?

9 A. No. I have a license to possess a machine
10 gun, Class E. I have a license to sell, lease, rent
11 firearms, rifles, shotguns and machine guns. I have
12 a license to perform gunsmithing. I have a license
13 to sell ammunition. I also have a Federal firearms
14 dealer's license. Did you ask about that?

15 Q. I asked about any and all licenses.

16 A. Okay. I just want to be responsive.

17 Q. I appreciate that. Any other licenses that
18 you recall -- withdrawn. Do you have any other
19 license to which you did not testify?

20 A. Gun licenses?

21 Q. Yes.

22 A. No.

23 Q. The FFL is of course federally issued.
24 What about the remainder of the licenses you just

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1 stated? Who are the issuing authorities?

2 A. East Bridgewater Police Department,
3 specifically the chief.

4 Q. For each of the other --

5 A. For each of the others, yes.

6 Q. Do you know who the chief of the East
7 Bridgewater Police Department is?

8 A. I do.

9 Q. What is her or her name?

10 A. Scott Allen.

11 Q. Are you acquainted with Chief Allen?

12 A. No.

13 Q. You just know of him as being the chief of
14 police?

15 A. I know who he is, but I don't know him.

16 Q. Do you know as you sit here today the
17 approximate dates of issue of each of the licenses
18 you just recited?

19 A. I don't.

20 Q. Are they all currently valid?

21 A. Yes.

22 Q. None are expired at the moment?

23 A. No.

24 Q. Have any of these licenses ever been

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1 suspended or terminated for any reason?

2 A. No.

3 Q. Have any of the licenses that you testified
4 to lapsed for any reason at any point in time?

5 A. Well, I don't know. I don't know if
6 there's a grace period on an ammunition dealer's
7 license. I don't think there is. That might have
8 been -- no, I don't think it was. I think there's a
9 grace period on an ammunition dealer's license.

10 Q. I don't want to assume, but I take it you
11 are bringing that up because it's --

12 A. It's possible it lapsed. I can't say for
13 sure.

14 Q. Just so your testimony is clear, it's
15 possible that your ammunition dealer's license
16 lapsed at some previous point in time or that it is
17 currently lapsed?

18 A. Oh, no. It's current.

19 Q. But it's possible that at some previous
20 point in time, it might have lapsed prior to the
21 time that you renewed it?

22 A. It may have.

23 Q. But you are not certain as you sit here
24 today?

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1 A. I am not certain.

2 Q. What process or processes did you have to
3 undergo to obtain your Class E machine gun license?

4 A. Well, I issued it to myself originally.
5 The reason I did was because I had a machine gun on
6 the police department. I thought if I was ever
7 going to take it home, it would be an appropriate
8 thing to have the license to do that.

9 Q. When you say you issued it to yourself,
10 what do you mean?

11 A. I was the firearms licensing officer.

12 Q. I take it this was for the Town of Randolph?

13 A. It was.

14 Q. For how many years were you the firearms
15 licensing officer for the Town of Randolph?

16 A. 15 or so.

17 Q. Which years were those?

18 A. I would say 1995 to 2010.

19 Q. What was the nature of your duties as a
20 firearms licensing officer for those years?

21 A. I would accept applications, review
22 applications, make a determination of whether or not
23 to issue the license. Then either issue it or, if
24 needed to be, denied. There were occasions when it

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1 was my job to suspend or revoke a license so I did
2 that sort of thing.

3 Q. I had understood your testimony to be that
4 apart from the FFL, the licensing authority for the
5 other licenses that you testified you had, including
6 the machine gun license, was the Town of East
7 Bridgewater. Is that the current licensing
8 authority for your machine gun license or is it
9 still through the Town of Randolph?

10 A. No. It's East Bridgewater now.

11 Q. Could you please explain the process by
12 which the licensing authority for your Class E
13 machine gun license transferred from the Town of
14 Randolph to the Town of East Bridgewater.

15 A. The machine gun license was expiring. I
16 renewed it. I don't live in Randolph. I went to
17 where I lived.

18 Q. What is your understanding as you sit here
19 today of what the requirements are to obtain a
20 machine gun license in Massachusetts?

21 A. Well, the requirements are the same as to
22 obtain a Class A license, with a couple of added
23 things. One of them is that the reasons for
24 issuance would be either a bona fide collector or an

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1 MPTC firearms instructor. Since I was both, I met
2 the criteria.

3 Q. What does MPTC stand for?

4 A. Municipal Police Training Committee.

5 Q. This is the same training committee that
6 you testified earlier was part of the South Suburban
7 Police Institute?

8 A. Yes. They are not part of the institute.
9 The institute is part of them. The MPTC is the
10 overarching organization that regulates, governs
11 police training in the Commonwealth.

12 Q. Do you have a manufacturing license?

13 A. I do.

14 Q. That's also issued by the Town of East
15 Bridgewater?

16 A. No. That's my Federal dealer's license.

17 Q. What is the scope of your FFL?

18 A. I don't understand.

19 Q. What is your understanding as you sit here
20 today of what your FFL permits you to do with
21 respect to firearms?

22 A. Buy in interstate commerce, sell either
23 retail or in interstate commerce, also to
24 manufacture.

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1 Q. Has On Target ever been inspected by either
2 East Bridgewater Police Department or any other
3 inspecting authority?

4 A. Alcohol, Tobacco, Firearms and Explosives
5 was there in March. They conduct an audit of the
6 guns, the books, et cetera.

7 Q. Was this a standard ordinary course audit
8 or was there a specific reason that you understand
9 as to why they were auditing?

10 A. No, no. It was the standard.

11 Q. What did that audit comprise of, as you
12 recall?

13 A. There was an individual that came out. He
14 checked my inventory of guns to make sure it matched
15 up with what my computer says. They call it "the
16 book." It's computerized. He went through a year's
17 worth of transactions to make sure that the
18 paperwork was done correctly.

19 Q. Do you recall what the result of that audit
20 was?

21 A. Well, I remember him smiling when he told
22 me that all the guns were good. We were not missing
23 any. I was smiling too. He found a couple of minor
24 mistakes. That's what he's there for. Sometimes

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1 people might write that they were born in Boston,
2 but not Boston, Mass., and I wouldn't catch it. He
3 told me there was nothing in my records that would
4 make it difficult to trace a firearm. He said
5 there's nothing I had to go back and correct, you
6 know, that it was pretty good.

7 Q. Do you recall the name of the inspecting
8 officer?

9 A. James Bender.

10 Q. Had you met Mr. Bender prior to the date of
11 that inspection?

12 A. No.

13 Q. Apart from the ATF audit this past March,
14 have you been audited by the East Bridgewater Police
15 Department or inspected by the East Bridgewater
16 Police Department?

17 A. No.

18 Q. At no point from the time you opened up
19 your storefront in 2012 to the present?

20 A. No.

21 Q. Turning to the topic of training with
22 respect to firearms, could you please walk me
23 through your own training that you have received,
24 where you received it, and what the nature of the

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1 training was.

2 A. When I was a young lad, my father and my
3 grandfather taught me to shoot. They taught me to
4 keep the gun pointed in a safe direction and keep my
5 finger off the trigger. I enjoyed it. It wasn't
6 really too much into it.

7 I got appointed to the police academy --
8 sorry -- the police department. They sent me to the
9 police academy. We had firearms training there,
10 fairly extensive I would say. Once again, stressing
11 safety. We did qualifications. You qualify to
12 carry a gun.

13 Once out of the academy, there was periodic
14 firearms training on the police department.

15 At some point around 1986, I was asked to
16 assist the range officer at the time. He asked me
17 to assist him at the range. That was a pretty big
18 deal to me. I said, "Sure." I said, "What do you
19 want me to do?" He said, "Well, for this year I
20 want you to lug all the heavy stuff." I did that.

21 Then they sent me to firearms instructor
22 school. At that time it was handguns. Then they
23 sent me to shotgun instructor school, which was
24 shotguns. Then they sent me to patrol rifle

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1 instructor school, which was patrol rifles. They
2 sent me to use of force instructor school, which
3 dealt with use of force. They sent me to Glock
4 transitional instructor school, which dealt with
5 specifically Glock pistols. They sent me to Glock
6 armorer school on a couple of occasions, then Glock
7 advanced armorer school. They sent me to -- I
8 forget the name of the company, but it was the
9 company to -- the company taught how to build and
10 disassemble and repair AR-15s.

11 I also became for a period of time a
12 certified Rock River Arms warranty station, although
13 I never did anything with it.

14 I'm sure there's more. That's what comes
15 to mind.

16 Q. Is it fair to say you've been extensively
17 trained on firearms?

18 A. That would be fair.

19 Q. Could you please help me understand the
20 nature of the training you received at patrol rifle
21 school.

22 A. We learned how to shoot them. We learned
23 how to clean them. We learned how to carry them.
24 We learned how to load them and unload them. We

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1 learned how to not shoot them because a lot of times
2 that's what you have to do. We learned to shoot
3 standing, sitting, kneeling and prone. We learned
4 to shoot stationary and on the move. We learned to
5 shoot behind cover and not behind cover.

6 You want me to get into the cleaning and
7 disassembly, how to do that?

8 Q. Please do.

9 A. We learned how to take apart the rifle,
10 take the upper off the lower, take the buffer apart,
11 take the bolt carrier group out, disassemble the
12 bolt, clean it, put it all back together without
13 losing any little parts.

14 We learned about ballistics, how to zero a
15 rifle, how to take a rifle and go from battle zero
16 to individual operator zero.

17 Q. What patrol rifles were you trained on at
18 patrol rifle school?

19 A. Bushmaster XM-15s, I think they were.

20 Q. Is that an AR-15?

21 A. No. An AR-15 is an Arma-Lite rifle. The
22 AR-15 is a specific model of a specific rifle
23 manufactured by a specific company.

24 Q. Is it fair to say the XM-15 is an AR-15

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1 style rifle?

2 A. Yes.

3 Q. Were you trained on the XM-15 alone or on
4 other AR-15 style rifles at patrol rifle school?

5 A. I think we also used some Colt Sporters,
6 which is similar.

7 Q. Is the Colt Sporter an AR-15 style rifle?

8 A. It is.

9 *Q. And is it your understanding that the
10 upper -- the various parts to which you testified
11 to, the upper receiver, the lower receiver, the
12 bolt, the bolt carrier in the Colt Sporter, would
13 they also work in, for example, the Bushmaster
14 XM-15 AR-15 style rifle?

15 MR. PORTER: Objection to the form of the
16 question. You can answer if you know.

17 A. I would say this. I would never do that.
18 I would put the Colt with the Colt. I would put the
19 Bushmaster with the Bushmaster. I don't know how
20 safe it would be to start mixing and matching.

21 Q. I understand. Is it your understanding
22 that the rifle that could be put together by mixing
23 and matching, as you put it, would it operational
24 were you to mix it?

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1 A. I believe it probably would.

2 Q. Do you have any reason to believe it
3 wouldn't?

4 A. No. I just have never done it so I don't
5 know.

6 Q. Understood.

7 MR. KROCKMALNIC: Ken, could you please
8 read back the question to which Mr. Porter objected.

9 *(Question read)

10 MR. KROCKMALNIC: If you tell me the nature
11 of the form objection, I would be happy to attempt
12 to rephrase it.

13 MR. PORTER: Sure. You can fix it quite
14 easily. It was really the form. The example left
15 it a little open-ended. If you were talking about
16 the one rifle, the Bushmaster on the one hand and
17 the Colt on the other, I have no objection. Those
18 are the two rifles he testified he had experience
19 with, and those are the examples you were using.
20 That's all.

21 MR. KROCKMALNIC: I understand. Thank you
22 for clarifying. I'll let it stand, then.

23 Q. Apart from the Colt Sporter AR-15 style
24 rifle and the Bushmaster XM-15 AR style rifle, do

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1 you recall being trained on any other rifles at
2 patrol rifle school?

3 A. No.

4 Q. Have you received any training on AK-47
5 style rifles?

6 A. No.

7 Q. Can you please briefly walk me through the
8 nature of the training you received at the Glock
9 armorer school and the advanced Glock armorer
10 school.

11 A. The basic Glock armorer school is a
12 complete disassembly/reassembly of the pistol, how
13 to diagnose problems and repair problems, how to
14 change parts, what would be the normal parts wear,
15 patterns, recommended maintenance, scheduling,
16 things like that.

17 The advanced armorer went into more. The
18 instructors would actually do things to the guns to
19 make them not work and then just give them to us and
20 ask us to diagnose and repair the problem. There
21 was an extra part that dealt with the Glock-18,
22 which is a machine pistol, and how to disassemble,
23 reassemble, diagnose, repair those issues as well.

24 Q. I believe you testified that you also went

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1 to school or received training for how to build,
2 disassemble and repair AR-15s?

3 A. That's correct.

4 Q. Is that separate from the training you
5 received at patrol rifle school?

6 A. No -- sorry. Yes. Yes. I'm sorry.

7 Q. No need to apologize. Could you please
8 walk me through the training that you received with
9 respect to building, disassembling and repairing
10 AR-15 style rifles.

11 A. Well, we learned to take a bag of parts and
12 turn it into a rifle basically. We learned about
13 the tools that are required. We got experience
14 using the tools that were required to do it. There
15 are some very specific tools. We would take all of
16 the parts of the rifle, locate them, build it into a
17 rifle. Then we would take it apart. Then we would
18 do it again, take it apart again. We did that at
19 least three times. Then we were done.

20 Q. Where was this training received?

21 A. That was at the Municipal Police Training
22 Academy in Randolph, Massachusetts, the old Tower
23 Hill School. I went there in first grade.

24 Q. I should have asked this but I didn't.

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1 Where was the patrol rifle school located?

2 A. The Holbrook Sportsmen's Club. It's a gun
3 range.

4 Q. Is that in Holbrook, Mass.?

5 A. It is.

6 Q. Who ran that training?

7 A. The Municipal Police Training Committee.

8 Q. Going back and forth here. Going back to
9 the training you received at the Municipal Police
10 Training Academy in Randolph, building,
11 disassembling, repairing AR-15 style rifles, do you
12 recall what brand AR-15 style rifles you were
13 trained on?

14 A. I don't.

15 Q. You just know they were AR-15 style rifles?

16 A. I do know that. I knew they were AR-15
17 rifles. It's not an assault rifle.

18 Q. I have not used that term.

19 MR. PORTER: I think he misheard you.
20 That's all. Sorry to interrupt. I think he just
21 misheard what you said.

22 MR. KROCKMALNIC: I appreciate that.

23 Q. My question was if you recall the brand or
24 the models of AR-15 style rifles that you were

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1 trained on at the Municipal Police Training Academy
2 in Randolph.

3 A. I don't.

4 Q. You just knew them to be AR-15 style rifles?

5 A. Yes.

6 Q. Was it your understanding in the training
7 that you received that how to build, how to
8 disassemble, how to repair these rifles holds true
9 across the range of AR-15 style rifles or was it
10 specific to, as you noted before, the Arma-Lite
11 AR-15?

12 A. Well, it all carries over. Pistol armory
13 carries over to rifles, carries over to machine
14 guns, carries over to shotguns. It's all very
15 similar, with obviously specific differences, like
16 in a pistol the barrel is much shorten than a rifle,
17 things like that. You need to understand more about
18 what goes on in the gun.

19 I think that what we gathered out of that
20 school was that most of what we trained on would
21 work on most of what we encountered. It's generic
22 because there's more than one police department
23 represented. They really don't talk too much about
24 some parts of the gun because some guns, for

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1 example, don't have the carry handle mounted sights.
2 They have flat tops. They don't get into too much
3 of that.

4 A lot of the stuff, yes, it carries across.
5 Not everything, but a lot of the stuff carries
6 across from brand to brand.

7 Q. It's fair to say that different police
8 departments use different AR-15 brand and model
9 rifles?

10 A. Yes.

11 Q. So this training was designed for active
12 duty police officers to effectively and safely use
13 their AR-15 style rifles?

14 A. This is to maintain them, to maintain those
15 rifles, not to use them. It's not a range course.
16 It's how to maintain them, how to keep them in
17 operating condition, how to fix them if they break.

18 Q. And you didn't recall what brand or
19 specific model of AR-15 you were trained on in that
20 course because you understood it was broadly
21 applicable for all AR-15s?

22 A. For many AR-15s, not all. I wouldn't say
23 all. I would say many.

24 Q. As you sit here now, which AR-15s was the

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1 training that you received at the Municipal Police
2 Training Academy not applicable?

3 A. Well, there are similar guns, like the H&K
4 rifle, that are similar but not the same. I would
5 never say that I know exactly how to take those
6 apart, fix them and maintain them. I probably could
7 do it, but I wouldn't do that, like, on a police
8 department gun because I don't feel qualified.

9 Q. What was the gun you just mentioned?

10 A. H&K, Heckler & Koch.

11 Q. This would be an AR-15 style platform?

12 A. To my understanding, it's similar.

13 Q. So I just want to make sure I understand
14 what your testimony is. You are saying the training
15 you received at that training academy may have been
16 applicable to that weapon but you are not sure?

17 A. Correct.

18 Q. Apart from the H&K AR-15 style rifles to
19 which the training might not have been applicable,
20 can you think of any other AR-15 style rifle that
21 the training that you received at that training
22 academy in Randolph would not have been applicable?

23 A. I can't think of any.

24 Q. I don't want to assume, but were you sent

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1 to this training academy because one of your duty
2 weapons in the course of your employment at Randolph
3 Police Department was an AR-15 style rifle?

4 A. That's correct.

█ █ [REDACTED]

█ [REDACTED]

█ █ [REDACTED]

█ █ [REDACTED] [REDACTED]

█ █ [REDACTED]

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Q. Is it your understanding the training you received at the Municipal Police Training Academy in Randolph on AR-15s was specifically applicable to your duty Bushmaster XM-15?

A. No.

Q. For what reason or reasons was it not applicable?

A. It was not specifically applicable. It was a generic class.

Q. Sorry. I understand that. I'm doing a poor job of phrasing the question. Let me try it another way. Is there anything you learned in that class with respect to how to build, disassemble, repair, et cetera, AR-15 style rifles that was not applicable specifically to your duty Bushmaster XM-15 rifle?

A. Yes.

Q. What?

A. The use of the carry handle mounted rear sights. We took those carry handles off.

Q. "We" meaning?

A. The department.

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1 Q. Randolph PD?

2 A. Meaning me.

3 MR. PORTER: You are doing fine, but don't
4 cross-talk.

5 Q. Apart from the carry mounted rear handle
6 difference, anything else you received -- any other
7 training you received at that training course that
8 would not have been applicable to your duty
9 Bushmaster XM-15?

10 A. No.

11 Q. Did you receive any training at any point
12 either in your career as a police officer or as a
13 private citizen on the use of firearms for
14 self-defense?

15 A. Well, as a police officer, sure.

16 Q. What is the training you received there?

17 A. That's exactly what you learn. That's all
18 of it. Self-defense or defense of others is when
19 you can shoot your gun.

20 Q. That's a fair point. I should have cabined
21 the question. I'll start again.

22 In the course of your operating as a
23 private citizen, which is to say not as a police
24 officer in the course of your police officer duties,

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1 have you received any trainings about use of
2 firearms for self-defense purposes for private
3 citizens?

4 A. I would say no.

5 Q. I suspect the answer to the next question
6 will be lengthy so I will leave it kind of
7 open-ended. Please describe the nature of the
8 training that you provided either as a police
9 officer or, again, as a private citizen on behalf of
10 On Target.

11 A. Firearms training?

12 Q. Yes. Thank you.

13 A. I taught basic firearms safety. What I did
14 is I joined two approved classes because I liked the
15 curriculum in both. I used the NRA Home Firearms
16 Safety course and the Mass. Chiefs of Police course.
17 I kind of merged them together. What that course
18 does is it teaches the students basic firearms
19 safety rules, the most important basic firearms
20 safety rules. For example, one of the most
21 important rules is if you don't know how to operate
22 a firearm, don't touch it. Another important one is
23 you never assume a firearm is unloaded. Always
24 treat every firearm as if it's loaded. Rules like

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1 always keep your finger off the trigger, always keep
2 your gun pointed in a safe direction, always leave
3 your gun unloaded unless you are actually using it.
4 I taught them those kind of safety rules.

5 We also taught them nomenclature about the
6 gun, front sight, rear sight, barrel, cylinder
7 magazine, safeties, that kind of thing, the
8 mechanical operation of the gun.

9 We taught them the use of sights, what a
10 sight picture should be, what their perception of
11 the target should be. We taught them about dominant
12 eye. We taught them about how to grip a gun, how to
13 hold it in their hand, how to place their finger on
14 the trigger, how to press the trigger.

15 We taught them how to load and unload. We
16 taught them how to shoot. You point the gun down
17 that way and press the trigger and make it go bang
18 (indicating). We did all that. We did it for
19 handguns, rifles, shotguns. We did it for the
20 police. We did it for private citizens.

21 I also taught instructors how to be
22 instructors. I was an instructor trainer. I was
23 responsible for recertifying the other instructors,
24 my cadre of instructors on the police department. I

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1 was responsible for maintaining their certification
2 as firearms instructors.

3 That's what comes to mind right now.

4 Q. Switching gears a bit, are you --

5 MR. HOWE: Well, before you do that, why
6 don't we take a short break. We've been going a
7 little over an hour now.

8 MR. KROCKMALNIC: Sure thing. Let's go off
9 the record.

10 (Discussion off the record)

11 (Recess at 10:45 a.m.)

12 BY MR. KROCKMALNIC: (11:00 a.m.)

13 Q. Mr. O'Leary, are you a member of GOAL, the
14 Gun Owners' Action League?

15 A. I am.

16 Q. How about Comm2A?

17 A. I am not a member of that, no.

18 Q. NRA?

19 A. Yes, life member, proudly.

20 Q. Any gun club?

21 A. Yes.

22 Q. Which?

23 A. Braintree Rifle and Pistol Club.

24 Q. How long have you been a member there?

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1 A. I don't know, a long time.

2 Q. When you say lifelong for the NRA, when did
3 you join the NRA?

4 A. Maybe 30 years ago.

5 Q. When did you join GOAL?

6 A. Maybe seven or eight years ago.

7 Q. Are you a member of these organizations or
8 are you also an officer of any of them?

9 A. Just a member.

10 Q. Apart from these organizations that I asked
11 about and the gun club, any other firearms related
12 organizations in which you are or have ever been a
13 member?

14 A. I was a member at the Standish Sportsmen's
15 Club for a while.

16 Q. Located where?

17 A. East Bridgewater.

18 Q. What's the Standish Sportsmen's Club?

19 A. A gun club.

20 Q. With respect to On Target, is On Target a
21 member of any of the organizations that I asked you
22 about?

23 A. I think we are. I think On Target is an
24 affiliate business of the NRA. I have some kind of

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1 a certificate. I don't know.

2 Q. What is your understanding of what it means
3 to be an affiliate business of the NRA?

4 A. I got to send them some more money. I
5 don't know what that means. It means that we are on
6 their side and they are on our side.

7 Q. Do you participate in any activities
8 organized by GOAL?

9 A. The rallies and those things?

10 Q. Yes.

11 A. No.

12 Q. Or any events or any talks or any sponsored
13 anything by GOAL?

14 A. No.

15 Q. So basically you are a member of GOAL, but
16 you don't participate in any active way?

17 A. Correct.

18 Q. Same questions for the NRA. Apart from
19 being a member of the NRA, do you participate in any
20 way with respect to offerings that it provides?

21 A. I am an NRA certified firearms instructor.
22 I maintain my certification as a firearms instructor
23 with them. That's about it, though. I don't go
24 to -- I'm not a meetings guy.

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1 Q. Do you use social media in the course of
2 either your business or personally?

3 A. Yes.

4 Q. Both?

5 A. Both.

6 Q. What forms of social media do you use?

7 A. Well, we have Facebook. We have Twitter.
8 We might have Instagram. I'm not really all that
9 knowledgeable about some of that stuff. I have
10 friends that help me with it.

11 Q. The "we" you are referring to I take it is
12 On Target?

13 A. Yes.

14 Q. So you have some friends that help with On
15 Target's social media presence?

16 A. Yes.

17 Q. Who are these friends?

18 A. Well, my daughter does a little bit. My
19 wife does a little bit. A friend of mine's daughter
20 does a little bit. We just go from there.

21 Q. Are you solely responsible for the content
22 of On Target's social media presence or are there
23 other folks that also contribute to it?

24 A. I'm solely responsible.

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1 Q. I take it that across these various
2 platforms, On Target has, generally speaking, posted
3 about firearms and firearms related matters?

4 A. Yes.

5 Q. Across all of these media, Instagram,
6 Twitter, Facebook?

7 A. I don't know if we ever put anything on
8 Instagram, honestly. I don't know. We might have.
9 I don't know. I know Twitter. I know Facebook.
10 I'm not sure about...

11 Q. Are you acquainted with any of GOAL's
12 social media accounts?

13 A. I know they have Facebook. I know that.

14 Q. Have you ever expressed any opinions about
15 this case, Worman versus Baker, on any social media
16 account, either personally or on behalf of On Target?

17 A. Oh, definitely, yes, I have.

18 Q. Where?

19 A. Everywhere, probably Facebook, probably
20 Twitter.

21 Q. Again, specifically about this litigation?

22 A. Oh, about this particular suit or about
23 what the suit derives from?

24 Q. My question was about this particular

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1 litigation, Worman versus Baker.

2 A. Oh. No. The only thing I posted about
3 Worman versus Baker was I going in for depositions
4 today. I think that's the only thing.

5 Q. Did you post this on Facebook, on Twitter,
6 both?

7 A. Facebook.

8 Q. Anywhere else?

9 A. No. I think it was just Facebook.

10 Q. What is your recollection as you sit here
11 today of what you posted earlier today about going
12 in for depositions?

13 A. I said, "I'm going in for depositions
14 today. I will keep you all posted."

15 Q. Why don't you answer the question you
16 thought I was asking you about whether you ever
17 posted on social media either personally or on
18 behalf of On Target with respect to, as you put it,
19 what this case derives from.

20 A. From the Enforcement Notice?

21 Q. Yes.

22 A. Yes. I posted it's clear she's running for
23 governor. I mean, I posted all kinds of thing like
24 that.

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1 Q. And the "she" here is the defendant Maura
2 Healey?

3 A. Yes. I don't know if Governor Baker was
4 really on her side with that. I don't have a lot of
5 talks with them.

6 Q. How did you hear about the possibility of
7 participating in this litigation?

8 A. It's my recollection that I saw something
9 on GOAL's Friday news posting that they send me
10 every Friday.

11 Q. What do you recall you saw on GOAL's Friday
12 news posting?

13 A. I just recall that they were interested in
14 knowing whether anybody was offended by or damaged
15 by this enforcement action, and I was both.

16 Q. What did you do in response to seeing that
17 post, if anything?

18 A. I did something. I replied to the email.
19 I contacted GOAL. They had somebody contact me, and
20 somebody contacted me.

21 Q. Do you recall who at GOAL contacted you?

22 A. I don't.

23 Q. What was the nature of their contact? What
24 did this person say to you when they reached out to

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1 you?

2 A. He told me that somebody would be in touch
3 with me.

4 Q. Then what happened?

5 A. Somebody was in touch with me, the
6 investigator for an attorney.

7 Q. Do you recall this investigator's name?

8 A. No.

9 Q. Do you know on whose behalf the
10 investigator was working?

11 A. I don't recall. I probably did at the
12 time, but I don't now.

13 Q. I understand. What did the investigator
14 tell you?

15 A. She took my name, address, phone number and
16 said that one of the attorneys would get in touch
17 with me.

18 Q. What happened next?

19 A. Some time went by. I received a call from
20 Mr. Porter first I believe, maybe.

21 Q. Are you familiar with the name "Suzanne
22 McComas"?

23 A. No.

24 Q. Are you familiar with the name "Thomas

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1 Bolioli"?

2 A. No.

3 Q. I want to be clear. I don't want to hear
4 about any conversations that you had at any point in
5 time with your lawyers when it was just with your
6 lawyers after the time that they agreed to be your
7 lawyers. Do you understand that?

8 A. Yes.

9 Q. Can you tell me about what conversations
10 you had with Mr. Porter or other lawyers relating to
11 this litigation prior to the time that they were
12 hired as your lawyer?

13 MR. PORTER: I object. Don't answer the
14 question.

15 MR. KROCKMALNIC: Fair enough. Could you
16 explain the basis.

17 MR. PORTER: Because you are asking him for
18 communications between his attorney.

19 MR. KROCKMALNIC: I said explicitly prior
20 to the witness actually being represented by counsel.

21 MR. PORTER: Well, I would take the
22 position that he was represented by counsel the
23 moment that we spoke. I mean, that was the purpose
24 for determining the basis for a possible

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1 representation. That's protected under the
2 lawyer-client privilege.

3 MR. KROCKMALNIC: I will reserve my right
4 to get back to this topic. For now I am simply just
5 noting our clear difference in position that the
6 attorney-client relationship is not formed at the
7 initial communication between an attorney and a
8 person who ultimately becomes his or her client.
9 Fair enough, though.

10 Q. Are you paying for your counsel in this case?

11 A. No.

12 Q. Switching gears again, what do you sell at
13 the actual storefront at On Target?

14 A. Well, we sell guns, handguns, rifles,
15 shotguns. We sell ammunition, holsters, safety
16 glasses, ear protection, cleaning supplies. We sell
17 nice purses that have built-in holsters for ladies.
18 We sell jewelry that my wife makes. It's beautiful.
19 We sell all kinds of accessories. We sell safes,
20 targets. There's probably more. Oh, we are going
21 to take on 511, 511 tactical gear, clothing. I have
22 not placed the order yet.

23 Q. You mean start carrying their --

24 A. Product, yes.

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1 Q. Do you have a sense of approximately what
2 percentage of the revenues of On Target derive from
3 the sales of actual firearms?

4 A. I would say it's fair to say, yes, I do.

5 Q. What is your best understanding of what
6 percentage of On Target's revenues comes from the
7 sales of firearms?

8 A. Probably more than half.

9 Q. Could you pinpoint it any more specifically?

10 A. No.

11 Q. What kind of firearms do you guys carry?

12 A. Well, we carry Glocks. The new ones are
13 for law enforcement only, but we also sell pre 1998
14 Glocks, which anybody can buy. We sell Smith &
15 Wesson. We sell Ruger. We sell Charter Arms. We
16 sell SIG Sauer. We sell Beretta. We sell HK. We
17 sell Colt, but they are all pre-ban, pre '98. We
18 sell High Standard. We sell a variety of imported
19 firearms, many of which I can't pronounce the names
20 of. We sell Walther. We well Canik. We sell
21 Remington. We sell Winchester. We sell Mossberg.
22 We sell Hi Point carbines, rifles. We sell Auto
23 Ordinance. We sell Henry.

24 I'm probably leaving a bunch out. Those

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1 are all brands that we sell.

2 Q. It's fair to say you sell many, many brands
3 of firearms; is that right?

4 A. Yes.

5 Q. With respect to styles of firearms, do you
6 sell pistols, rifles, shotguns, all of the above?

7 A. We do.

8 Q. You sell both new and used guns?

9 A. We do.

10 Q. You sell AR-15s?

11 A. We do, but only to law enforcement because
12 the enforcement action prevents us from doing it
13 otherwise.

14 Q. You noted you also have pre-ban Colts as
15 well?

16 A. Handguns.

17 Q. Oh, I understand. Okay. So when you said
18 "pre-ban," what were you referring to? I don't want
19 to assume anything.

20 A. The 1998 consumer product safety
21 regulations in the CMRs that Attorney General
22 Harshbarger put in when he was running for governor.

23 Q. Do you sell AK-47s?

24 A. I would to law enforcement.

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1 Q. You said, "would."

2 A. I actually have one pending. I have never
3 before. I never sold an AK-47 in the store before.
4 I've sold similar to.

5 Q. What do you mean by that?

6 A. The IWI. It's the same kind of gun, but
7 it's not made by Kalashnikov.

8 Q. IWI is Israeli Weapons Industries?

9 A. Yes.

10 Q. That's an AR-47 style rifle?

11 MR. PORTER: Object to form. Maybe you
12 should ask that again.

13 Q. Sorry. I meant AK-47.

14 A. Similar to, yes.

15 Q. Do you know approximately how many firearms
16 you have in your inventory at present?

17 A. You want me to guess, a close guess?

18 Q. Your best answer, yes.

19 A. 500.

20 Q. Approximately how many firearms did you
21 sell in 2015, if you recall?

22 A. This would be an approximation, but I think
23 it was in excess of 1,000, but not in excess of
24 2,000.

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1 Q. Of those how many were ARs?

2 A. No idea.

3 Q. Do you have a sense of approximately how
4 many ARs you sold in 2015?

5 A. No. A fair amount, but no, I don't know.
6 I can't give you a number.

7 Q. Approximately how many firearms did you
8 sell in 2016?

9 A. Probably closer to 2,000.

10 Q. Is it fair to say you sold more firearms in
11 2016 than in 2015?

12 A. Yes.

13 Q. And you know this because you are the owner
14 and you see the books of On Target?

15 A. I was there every day.

16 Q. How are sales this year so far as compared
17 to last year?

18 A. Since the election, they are down. Really,
19 they are down. Sales of the firearms -- well, the
20 rifles addressed in the enforcement action there
21 almost are completely gone.

22 Q. By "the election," you are referring to the
23 presidential election last November?

24 A. Correct.

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1 Q. Do you see a correlation between your sales
2 and the outcome of that presidential election?

3 A. Absolutely.

4 Q. Can you help me understand what that
5 correlation is.

6 A. People are horrified. Prior to the
7 election, they were afraid that the ultra left wing
8 liberal gun grabbers would be elected and take away
9 their rights to have guns. They were stocking up on
10 guns.

11 Q. And you helped them stock up on guns?

12 A. I just do what I can.

13 Q. Do you manufacture firearms yourself?

14 A. Well, we have not since the enforcement
15 action because we can't sell them, but we were
16 manufacturing AR-15s. By manufacture, we don't melt
17 the metal and forge the aluminum. We just put them
18 together. Not since then, though, because we can't
19 sell them.

20 Q. Describe what you mean by putting them
21 together. Of course, prior to the time of the
22 Enforcement Notice.

23 A. Well, somebody might come in and ask us to
24 build them a stripped lower or they might ask us to

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1 build a complete lower or they might ask us to build
2 them a complete upper, which we can still do, or
3 they might ask us to build them a complete rifle.
4 We would ask, What sort of specifications do you
5 want, what caliber, what barrel length, what kind of
6 a fore grip, what kind of stock. Of course, it all
7 has to be -- prior to the enforcement action, there
8 was the two out of five rule. We couldn't give them
9 a flash suppressor. We could not give them a
10 bayonet lug. We could not give them a collapsable
11 stock because those are three features. They wanted
12 a pistol grip, and they wanted to detach the box
13 magazine. Those were the two we could give them.
14 We would remain in compliance. But they may have a
15 certain specific stock that they want, which would
16 be collapsable, so we would then permanently pin
17 that. We would drill it and pin it. We would put
18 on the barrel length they want, the barrel twist
19 rate they want, whatever kind of sights, fore ends,
20 all that stuff, whatever color they like.

21 Q. This was all for AR-15s?

22 A. Yes.

23 Q. Did you manufacture any other firearms?

24 A. No.

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1 Q. From which brands would you assemble the
2 AR-15s that you manufactured?

3 A. Well, it might be Spikes Tactical. It
4 might be ATI. It might be Anderson. It might be
5 Bushmaster. It might be Palmetto State Armory,
6 CMMG. There's, like, a million companies.

7 Q. When you were assembling custom made ARs
8 for your clients, would you use one manufacturer's
9 parts throughout the entire firearm or would you
10 kind of mix and match different manufacturers for
11 different parts?

12 A. You had to be careful. Like, for example,
13 an Arma-Lite rifle, a lot of their stuff is not
14 interchangeable. We wouldn't build Arma-Lite
15 rifles, though. We didn't want to. It was a
16 headache. We tried to stick with, like, an ATI. We
17 tried to use parts that we would get in from ATI.

18 Q. What is ATI?

19 A. It's just the name of a company. I don't
20 know what that stands for.

21 Q. When you say you get parts in from ATI,
22 what do you mean?

23 A. We get them in from distributors actually.
24 We don't get anything from the factories directly.

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1 We go through distributors.

2 Q. You would stick to the parts you receive
3 from ATI in the course of assembling the AR-15s
4 custom made for your clients?

5 A. As much as possible, we stick with one
6 manufacturer.

■ ■ [REDACTED] ■
■ [REDACTED]
■ [REDACTED]
■ ■ [REDACTED]
■ ■ [REDACTED]
■ ■ [REDACTED]
■ ■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
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■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

19 Q. These are all distributors that you
20 currently work with?

21 A. Yes.

22 Q. Do you find the distributor to be
23 knowledgeable about the guns they sell to you?

24 A. Yes, I would say so.

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1 Q. Do you have an opportunity to ask each of
2 these distributors questions about the firearms that
3 they sell to you?

4 A. To ask them questions?

5 Q. Yes.

6 A. I ask them if they've got them. That's
7 usually the big one. On occasion somebody will call
8 and say, "Hey, I have these guns." I say, "Are they
9 on the Attorney General's list?" Well, there's not
10 a list, but I'll say, "Are they approved by the
11 Attorney General?" Sometimes they say, "Yes," and
12 sometimes they say, "I don't know."

13 Q. Who is "they"?

14 A. The distributor, the sales reps.

15 Q. So you will talk to the distributors from
16 time to time on topics that include things like
17 whether the specific firearm in question is approved
18 by the Attorney General?

19 A. Yes.

20 Q. Do you ever speak directly to manufacturers
21 of the firearms that you sell?

22 A. Once in a while I speak to factory reps. I
23 have spoke with the Smith & Wesson factory rep. I
24 spoke with the Glock factory rep. I spoke with the

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1 people from Charter Arms. There's probably others.

2 Q. Have you ever asked them questions about
3 the firearms that they are selling through
4 distributors to you?

5 A. Sure.

6 Q. What are the nature of the questions that
7 you have asked the manufacturers directly?

8 A. I ask them if they can give me a list of
9 guns that we can sell in Massachusetts. They say
10 yes sometimes, and sometimes they will say no.

11 Q. You noted that you used to sell more ARs
12 prior to the date of the Enforcement Notice; is that
13 correct?

14 A. Yes.

15 Q. Approximately what percentage of the
16 revenues of On Target were comprised by sales of ARs
17 prior to the date of the Enforcement Notice?

18 A. No idea. My system doesn't break it down
19 like that.

20 Q. I take it you are in the course now of
21 selling your first AK-47, is that what you testified
22 to earlier?

23 A. Yes.

24 Q. You never sold an AK-47 through On Target

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1 prior to today, correct?

2 A. Right. I never had an AK-47.

3 Q. Are you familiar with the term "large
4 capacity magazines"?

5 A. I am familiar with it, yes.

6 Q. What do you understand that term to mean?

7 A. I understand it to be something that
8 somebody made up one time. Somebody made an
9 arbitrary definition of ten, except for five. They
10 took what is the standard capacity magazines for
11 guns and decided that they would call them high
12 capacity.

13 Q. What is your understanding of what the
14 definition is large capacity magazines is?

15 A. A magazine for a rifle or shotgun that
16 holds more than 10 rounds is high capacity. A
17 magazine for a shotgun that is semiautomatic that
18 holds more than 5 rounds is high capacity.

19 Q. Have you sold any large capacity magazines
20 since the date of the Federal assault weapons ban in
21 1994?

22 A. Yes, to law enforcement.

23 Q. Have you ever sold any pre-ban large
24 capacity magazines subsequent to the Federal ban

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1 going into effect?

2 A. Yes.

3 Q. Do you continue to sell pre-ban magazines
4 at On Target today?

5 A. Yes.

6 Q. How do you know that the large capacity
7 magazines that you are selling at On Target today
8 are in fact pre-ban?

9 A. Some of them actually have the date stamped
10 on the inside. Others are manufactured by companies
11 that either merged or somehow they are not in
12 business anymore and have not been since then. That
13 would be stamped in the magazine fore plate.

14 Q. What would be stamped in the --

15 A. The name of the company, name of the
16 manufacturer.

17 Q. Just so I understand your testimony, to be
18 clear, you used the fact of the no longer, extent
19 company's name stamped in the fore plate of the
20 large capacity magazine to help you determine that
21 you are able to sell that large capacity magazine?

22 A. Yes.

23 Q. Approximately how frequently do you sell
24 large capacity magazines that are pre-ban currently

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1 at On Target?

2 A. As often as possible. They sell.

3 Q. Let me try and ask a better question.

4 Approximately how many pre-ban large capacity
5 magazines do you sell on an annual basis at On Target?

6 A. No idea.

7 Q. Can you ballpark it?

8 A. No. I don't know. I don't break it down
9 that way.

10 Q. Fair enough. On an average day, how many
11 pre-ban large capacity magazines do you sell at On
12 Target?

13 A. Some days none, and some days I'll sell
14 five. One guy bought 125 of them once. It varies.
15 I can't give you a fair estimate on that.

16 Q. You are still selling large capacity
17 magazines to law enforcement officers, that's your
18 testimony?

19 A. Yes.

20 Q. Have sales of large capacity magazines been
21 affected in any way as a result of the Enforcement
22 Notice?

23 A. Can you repeat that.

24 Q. Have sales of large capacity magazines been

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1 impacted in any way by the Enforcement Notice?

2 A. Yes.

3 Q. How?

4 A. For the pre-ban civilian market, it's much
5 slower than it was. For law enforcement, it's about
6 the same.

7 Q. What percentage of your large capacity
8 magazine sales come from sales to law enforcement
9 and what percentage come from sales to civilians?

10 A. I don't have an answer. I don't know.
11 Much less to the civilian market now than prior to
12 the Enforcement Notice.

13 Q. What is your best guess of how many fewer
14 large capacity magazines you are selling on a daily
15 basis because of the Enforcement Notice?

16 A. Probably half.

17 Q. Do you have any understanding of kits for
18 AR-15s that can convert the firearms to fully auto
19 fire?

20 A. To truly convert an AR-15 to fully
21 automatic fire -- you just can't do it because you
22 haven't got the space in the receiver to change the
23 sear in order to put the appropriate parts into the
24 gun, and that would be wicked illegal anyway.

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1 Q. Do you sell any conversion kits?

2 A. Are you talking about Bump Feed?

3 Q. Among others.

4 A. I don't sell them.

5 Q. Any other kits with respect to converting
6 ARs that you have or currently sell?

7 A. No. I don't sell anything like that.

8 Q. Have you ever used a Bump kit or any other
9 conversion kit on any AR?

10 A. No.

11 MR. PORTER: Wait for the whole question.

12 THE WITNESS: I'm sorry.

13 MR. PORTER: You are doing fine.

14 Q. Are you familiar with the difference
15 between centerfire rifles and rimfire rifles?

16 A. Yes.

17 Q. What is your understanding of the
18 difference between centerfire rifles and rimfire
19 rifles?

20 A. Well, a centerfire rifle has its primer in
21 the center of the case head. A rimfire round of
22 ammunition has its primer on the rim of the case
23 head.

24 Q. Are there any other differences with

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1 respect to the fire of ammunition from a rimfire as
2 compared to the centerfire?

3 A. I don't think I understand the question.

4 Q. Let me step back. Do rimfire cartridges
5 have the same amount of charge as centerfire
6 cartridges?

7 A. Again, I don't know what you mean by
8 "charge."

9 Q. Specifically with respect to on the one
10 hand the 22 rimfire cartridge and on the other hand
11 a 223 centerfire cartridge.

12 A. I'm familiar with both. I'm trying to -- I
13 just don't understand what you are asking me about
14 it.

15 Q. Sure. The charge, does one of those have
16 more charge, more firing capacity than the other?

17 A. Firing capacity... I'm not understanding
18 the term. Each one can only fire one.

19 Q. Understood. So not with respect to number
20 but with respect to force, is there a difference as
21 between those two?

22 A. Oh, yes.

23 Q. What is the difference?

24 A. The 22 caliber rimfire round is a much less

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1 powerful round than the centerfire 223 round.

2 Q. What is your understanding of the reason
3 why the 22 caliber rimfire round is much less
4 powerful than the 223 centerfire round?

5 A. It's much smaller. It's much lighter. It
6 has much less gunpowder.

7 Q. Does it emerge from the barrel of the
8 firearm more slowly than the bullet from a
9 223 centerfire round, if you know?

10 A. Oh, I know. There are a variety of
11 different 223 rounds that have a variety of
12 different muzzle velocities. The same holds true
13 with the 22 caliber rounds. There may be in fact
14 some 22s that go faster than some 223s. I don't
15 know that to be true, but there very well may be. I
16 cannot tell you the absolute answer. I would have
17 to look it up.

18 Q. Fair enough. As you sit here today, can
19 you think of any 22 rimfire round that is fired from
20 an AR-15 faster than a 223 centerfire round?

21 A. Again, brand specific I cannot answer that.

22 I don't know the answer to that.

	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

80

[illegible]

81

[REDACTED]

[REDACTED]

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1

2

3

4

Q. Did you ever carry machine guns in the course of your employment as a police officer?

5

A. I did.

6

Q. Which machine gun did you carry?

7

A. Glock 18.

8

Q. This was a duty weapon?

9

A. It was a specialty item that we had.

10

Q. What do you mean by that?

11

A. It's not something that you would carry on patrol. It would be for a special operator, that kind of a situation where you need some intense fire power really quickly delivered into a target area. I was the instructor so I had to be very familiar with it.

12

Q. This was at Randolph PD?

13

A. That's correct.

14

Q. Have you ever fired a firearm in self-defense as a civilian?

15

A. No.

16

Q. How about as a police officer?

17

A. No.

18

Q. Have you ever fired any firearm apart from training situations in the course of your employment

19

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1 as a police officer?

2 A. I don't think I know what you mean.

3 Q. Putting aside on the shooting range or in a
4 firearms training school or something like that,
5 have you ever fired a firearm as a police officer on
6 the job?

7 A. Yes.

8 Q. How many times?

9 A. Four, all at once.

10 Q. In one occasion you fired your firearm four
11 times, four rounds?

12 A. Yes.

13 Q. What do you recall about that occasion?

14 A. It was a goose that got mauled by some
15 dogs. He needed to be euthanized. Even after four
16 rounds it didn't work.

17 I can tell you what happened after that if
18 you want to know.

19 Q. Sure.

20 A. The dogcatcher ran it over.

21 Q. Thank you. Apart from that circumstance,
22 have you ever fired a firearm in the course of your
23 employment as a police officer in a non-training
24 situation?

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1	A.	No.
---	----	-----

2 Q. How about as a civilian, have you ever
3 fired a firearm in a non-training situation?

4	A.	No.
---	----	-----

5 Q. Have you ever drawn and aimed your firearm
6 in a non-training situation as a civilian?

7	A.	No.
---	----	-----

8 Q. Same question as a police officer.

9 A. Of course I have.

10	Q. Multiple occasions?
----	------------------------

11 A. Yes. There have been times.

12 Q. Approximately how many times?

13 A. I don't know. I have no idea. No idea.

14 Q. This was your duty weapon?

15 A. Yes, it was.

16 Q. At all times it was a handgun?

17	A. Yes.
----	---------

18 Q. Have you ever aimed a non-handgun in a
19 non-training situation during the course of your
20 employment as a police officer?

21	A.	No.
----	----	-----

[REDACTED] [REDACTED]

87

[illegible]

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[REDACTED]

8 Q. In the complaint in this lawsuit, it states
9 that On Target is no longer able to sell certain
10 guns; is that right?

11 A. I don't know what the complaint says
12 specifically.

13 Q. Did you review the complaint prior to it
14 being filed?

15 A. I may have.

16 Q. You are not sure?

17 A. I'm not sure. There's been a fair amount
18 of paperwork.

19 Q. Again, without disclosing the contents of
20 any conversation you ever had solely with your
21 lawyer or lawyers with respect to this case, do you
22 recall reviewing the complaint prior to the time it
23 was filed?

24 A. I don't recall.

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1 Q. What is your understanding as you sit here
2 today of what the allegations made by you -- and,
3 again, "you" is you, On Target Training -- in the
4 complaint of this litigation?

5 A. My understanding is that our complaint is
6 that the Attorney General in her Enforcement Notice
7 changed the rules by which firearms are -- well, not
8 firearms -- that rifles are sold; she reinterpreted
9 what the previous three Attorney Generals had
10 evidently interpreted in a much different manner,
11 and that was not a lawful thing to do; and anyway
12 that whole chapter and section of the General Laws
13 is basically violative of the Second Amendment.

14 Q. What is the harm you are alleging?

15 A. I'm losing money. I'm losing money. My
16 rights have been violated, and I'm offended by that.
17 But I'm losing money. I'm losing sales. Sales of
18 rifles are just about nonexistent. Sales of
19 ammunition are much, much, much reduced. Sales of
20 cleaning kits and other accessories are much, much,
21 much reduced. I'm losing money. I'm losing a lot
22 of money.

23 Q. How much money are you losing?

24 A. It's hard to say. You can't predict

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1 something that never happened, but however many guns
2 I sold in 2015, I'm not going sell that many in
3 2017, of those modern sporting rifles.

4 Q. What firearms are you no longer selling at
5 On Target as a result of the Enforcement Notice,
6 today?

7 A. Smith & Wesson M&P 15s, Windham Weapons,
8 WW-15s, Bushmasters, Daniel Defense. I mean,
9 basically all of them. I can't sell them anymore.

10 Q. By "all of them," what are you referring to?

11 A. All of the modern sporting rifles,
12 semiautomatic, gas operated that are similar in
13 nature to the Arma-Lite AR-15. Also, at the same
14 time, the AK-47s, but it's not a big loss for that.
15 Also, the ones that are similar in nature, like the
16 IWI. I can't sell Steyr AUGs anymore. I can't sell
17 them anymore.

18 Q. Is it your understanding that you were
19 lawfully able to sell Steyr AUGs to non-law
20 enforcement officers prior to the date of the
21 Enforcement Notice?

22 A. You know, I would have to look at that.
23 I'm not sure. I can't really say for sure.

24 It's primarily the two.

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1 Q. By "the two," what do you mean? AR-15s and
2 AK-47s?

3 A. Sure.

4 Q. Is that a yes?

5 A. That's a yes.

6 Q. The Steyr AUG is one of the enumerated
7 weapons that was on the federally banned list in
8 1994; is that right?

9 A. It was.

10 Q. So that's not a weapon that you can't sell
11 anymore by virtue of the Enforcement Notice,
12 correct?

13 A. It's not what?

14 Q. That's not a weapon that you can't sell
15 anymore by virtue of the Enforcement Notice,
16 correct?

17 A. I would have to look. I don't have those
18 things memorized.

19 Q. But it's your understanding that it is on
20 the list of enumerated weapons on the Federal 1994
21 banned list, right?

22 A. Yes, I think it is.

23 Q. And you are actually now in the course of
24 selling an IWI AK-47 style rifle, correct?

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1 A. No. It's not IWI. It's an actual...

2 Q. Oh, it's a Kalashnikov?

3 A. Yes. Well, it's a Century Arms import. I
4 don't know exactly who manufactures it.

5 Q. This is an AK-47 style rifle?

6 A. Yes.

7 Q. And it's to a law enforcement officer?

8 A. Yes.

9 Q. So when you say you are no longer selling
10 these firearms, specifically the AR-15 style
11 firearms and the AK-47 style firearms, it's to
12 non-law enforcement officers that you are no longer
13 selling them, correct?

14 A. Yes.

15 Q. You are still in fact selling AR-15 style
16 firearms to law enforcement officers?

17 A. Yes.

18 Q. Are you still selling WW-15s to law
19 enforcement officers?

20 A. I would. I don't know if I have, but I
21 would.

22 Q. Which is to say that there's nothing
23 stopping you from doing so; is that correct?

24 A. I don't believe so.

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1 Q. What about M&P 15 rifles, are you selling
2 those currently to law enforcement officers?

3 A. I am.

4 Q. They are actually one of the more popular
5 law enforcement duty rifles, aren't they?

6 A. They're okay. It's a pretty decent rifle.

7 Q. They are commonly bought by law enforcement
8 officers; is that correct?

9 A. It's not our biggest seller. There is a
10 few. There's a scattering of those rifles.

11 Q. What is your biggest seller?

12 A. Well, that might be the biggest seller, but
13 it's not a big seller. There's not a lot of trade
14 in those guns.

15 Q. Are you still selling Bushmaster XM-15s to
16 law enforcement officers?

17 A. I would.

18 Q. How about the Daniel Defense AR-15 style
19 rifles, are you still selling those to law
20 enforcement officers?

21 A. I would.

22 Q. Apart from the firearms you stated, the
23 Windham Weaponry, the Smith & Wesson, the
24 Bushmaster, the Daniel Defense, the Kalashnikov and

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1 the IWIs, are there other firearms you are no longer
2 selling to civilians as a result of the Enforcement
3 Notice?

4 A. Yes.

5 Q. Which?

6 A. Stag Arms, Spike Tactical, ATI. There's a
7 whole list of them.

8 Q. What types of firearms are these?

9 A. Similar to the AR-15, the modern sporting
10 rifle.

11 Q. Is there anything else you are no longer
12 selling?

13 A. It's hard to say if I'm not selling it.
14 There's so much that...

15 *Q. I'll rephrase the question so it will be
16 easier to say hopefully. Are there any other
17 weapons, apart from those that you have listed out,
18 that you are no longer willing to sell as a result
19 of the Enforcement Notice?

20 A. Well, anything that appears to be something
21 that will get me in trouble. If somebody brought to
22 me a gun broker ad or a sales catalog or something
23 like that, I would have to look at it.

24 There probably are other guns that I

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1 wouldn't sell. I'm probably forgetting a dozen, two
2 dozen. I don't know. The point is I can't sell any
3 of them, and I don't.

4 MR. KROCKMALNIC: Ken, can you read back
5 the question, please.

6 *(Question read)

7 Q. My next question is, apart from those
8 specific weapons that you listed, the AR-15 style
9 weapons and the IWI, are there any other weapons
10 that you have specifically decided, not
11 hypothetically, specifically decided that you are no
12 longer going to sell at On Target that you
13 previously had sold at one point?

14 A. It does not come to my mind, but there
15 probably is. I probably forgot or missed something.

16 Q. As you sit here today, you can't think of
17 anything else?

18 A. I cannot think of anything right now.

19 (Document marked as O'Leary
20 Exhibit 2 for identification)

21 Q. You've been handed what was marked as
22 Exhibit 2 for identification. Please take your time
23 and review it. Let me know when you have done so.

24 A. (Examines document) Okay.

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1 Q. Do you recognize that document?

2 A. I do.

3 Q. What do you recognize it to be?

4 A. Requests for Production of Documents.

5 Q. And have you seen that document prior to
6 today?

7 A. I have.

8 Q. Were you shown that by counsel?

9 A. I was.

10 Q. Have you provided your counsel with all
11 documents that are responsive to the topics requested?

12 A. I have.

13 Q. You in fact produced to this office records
14 of many firearm transactions; is that correct?

15 A. I did.

16 Q. Many of those firearm transactions in fact
17 occurred on July 20, 2016, the date of the
18 Enforcement Notice, correct?

19 A. Correct.

20 Q. When and how did you first receive the
21 Enforcement Notice itself?

22 A. I got it the next day in the mail.

23 Q. When did you first receive word of the fact
24 the Enforcement Notice was issued?

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1 A. Customers were talking about it the day
2 that -- the 20th.

3 Q. The day of the 20th?

4 A. Yes, July 20th.

5 MR. KROCKMALNIC: I think we are just about
6 done. If you don't mind, I would like to take a
7 quick break and confer with Liz and make sure we are
8 not missing anything.

9 MR. PORTER: Of course.

10 (Recess at 12:07 p.m.)

11 MR. KROCKMALNIC: (12:10 p.m.) We have
12 nothing further. Thank you very much.

13 MR. PORTER: No questions.

14 (Whereupon the deposition
15 was concluded at 12:10 p.m.)
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C E R T I F I C A T E

I, EDWARD O'LEARY, do hereby certify that I have read the foregoing transcript of my testimony, and further certify under the pains and penalties of perjury that said transcript (with/without) suggested corrections is a true and accurate record of said testimony.

Dated at _____, this ____ day of _____, 2017.

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
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[illegible]

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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 14th day of
6 September, 2017, at 9:39 a.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 29th day of
21 September, 2017.

22

23

24

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Under Federal Rule 30:

X Reading and Signing was requested

Reading and Signing was waived

Reading and Signing was not requested

Ken A. DiFraia

Notary Public

Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 10
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Maura Healey, et al.

Charles M. Ricko, II
Vol. I
September 13, 2017



DORIS O. WONG
ASSOCIATES, INC.

C O U R T R E P O R T E R S

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Phone (617) 426-2432

Original File RICKO_Charles.txt
Min-U-Script® with Word Index

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -X
:
DAVID SETH WORMAN, ANTHONY :
LINDEN, JASON WILLIAM SAWYER, :
NICHOLAS ANDREW FELD, PAUL :
NELSON CHAMBERLAIN, GUN :
OWNERS' ACTION LEAGUE, INC., :
ON TARGET TRAINING, INC., AND :
OVERWATCH OUTPOST, :
Plaintiffs, :
:
vs. : Civil Action
:
MAURA HEALEY, in her official :
capacity as Attorney General :
of the Commonwealth of :
Massachusetts; DANIEL :
BENNETT, in his official :
capacity as the Secretary of :
the Executive Office of :
Public Safety and Security; :
and COLONEL RICHARD D. :
McKEON, in his official :
capacity as Superintendent of :
the Massachusetts State :
Police, :
Defendants. :
:
- - - - -X

DEPOSITION OF OVERWATCH OUTPOST THROUGH ITS
DESIGNEE CHARLES M. RICKO, II, a witness called on
behalf of the Defendants, taken pursuant to
Rule 30(b)(6) of the Federal Rules of Civil
Procedure, before Ken A. DiFraia, Registered
Professional Reporter and Notary Public in and for
the Commonwealth of Massachusetts, at the Office of
the Attorney General, 100 Cambridge Street, Boston,
Massachusetts, on Wednesday, September 13, 2017,
commencing at 9:39 a.m.

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2

PRESENT:

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for the Defendants.

* * * * *

Charles M. Ricko, II - Vol. I - September 13, 2017

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
CHARLES M. RICKO, II				
BY MR. KLEIN	4			

* * * *

E X H I B I T S

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* * * *

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1 P R O C E E D I N G S

2 CHARLES M. RICKO, II

3 a witness called for examination by counsel for the
4 Defendants, having been satisfactorily identified by
5 the production of his driver's license and being
6 first duly sworn by the Notary Public, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. KLEIN:

10 Q. Morning, sir. Would you please state your
11 full name, your home and your business address for
12 the record.

13 A. Charles Myron Ricco, II. [REDACTED]

14 [REDACTED]
15 My business address is 97 Main Street in Charlemont,
16 Massachusetts.

17 Q. It would probably be helpful if you spelled
18 Ricko for the record because it's not the normal
19 spelling.

20 A. R-i-c-k-o.

21 Q. I'm Gary Klein, one of the attorneys for
22 the defendants in this matter, which is Worman
23 versus Baker, a case in which your business,
24 Overwatch Outpost, is a plaintiff, correct?

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1 A. Correct.

2 Q. Have you had your deposition taken before?

3 A. I have.

4 Q. So you generally understand the rules of
5 the road in a deposition, correct?

6 A. I believe so.

7 Q. I just want to go over some ground rules in
8 case any question comes up later.

9 The first and most important ground rule is
10 if a question is unclear, I want you to ask me to
11 clarify it. If you don't ask me to clarify, I will
12 assume that you understood the question, okay?

13 A. Understood.

14 Q. It's important that you answer all the
15 questions verbally. The reporter can't take down
16 nods or shakes of the head, okay?

17 A. Understood.

18 Q. I want you to wait for all the questions to
19 be completed as best as possible. It's important
20 that we not talk over each other during the course
21 of the deposition, okay?

22 A. Okay.

23 Q. You can take a break at any time. Feel
24 free to ask for one. We will always take a break,

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1 unless there's a question pending for you to answer,
2 okay?

3 A. Okay.

4 Q. It's possible from time to time your
5 attorney will object to a question. If your
6 attorney objects, you should wait for him to
7 complete the objection, and then he will either
8 instruct you to answer or not to answer. If he does
9 instruct you to answer, you can go ahead and answer,
10 okay?

11 A. Okay.

12 Q. You are aware that this is a deposition
13 taken under oath, correct?

14 A. Correct.

15 Q. And this means that you have the obligation
16 to answer all the questions truthfully, right?

17 A. Yes.

18 Q. And your testimony here is under the
19 penalty of perjury, right?

20 A. Yes.

21 Q. Thank you.

22 MR. KLEIN: Can I confirm on the record the
23 deposition is being taken pursuant to the Federal
24 Rules, particularly Rule 30 of the Federal Rules of

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7

1 Civil Procedure?

2 MR. PORTER: The plaintiffs assent to that.

3 MR. KLEIN: I assume the witness will
4 exercise his right to review and correct the
5 transcript and make any corrections necessary?

6 MR. PORTER: That's correct.

7 MR. KLEIN: Thank you.

8 Q. Mr. Ricko, can you tell me how you are
9 employed.

10 A. I'm self-employed.

11 Q. Is it correct to say that you have a
12 business?

13 A. It is. Well, I actually have two jobs. I
14 own a business, and I'm also still employed as a
15 police officer.

16 Q. You are self-employed as a police officer?

17 A. No. I have two jobs.

18 Q. Let's take them one at a time.

19 A. I own Overwatch Outpost. That's my
20 business. In addition to that, I am employed as a
21 police officer.

22 Q. Where are you employed as a police officer?

23 A. Town of Charlemont.

24 Q. And that's the town where your business is

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8

1 located?

2 A. Correct.

3 Q. Are you full-time on the police force?

4 A. No.

5 Q. About how many hours do you work each week
6 as a police officer?

7 A. As few as I can these days.

8 Q. How many is that?

9 A. Actually, I have not worked any shifts -- I
10 worked about an hour last night in the station.
11 Aside from that, I have not really worked any
12 regular shifts in a couple of months.

13 Q. So explain to me how your work as a police
14 officer is controlled. Are you on call as a police
15 officer?

16 A. No. We have a part-time police department,
17 and the chief sets the hours. I just haven't -- I
18 mean, we can volunteer to, you know, put in for more
19 hours, but I have a lot of other things to do. I
20 don't work as many hours as some of the others.

21 Q. Was there ever a time that you did work
22 full-time as a police officer?

23 A. Yes.

24 Q. What period of time was that?

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1 A. It would be prior to 1994.

2 Q. Was that also in the Town of Charlemont?

3 A. No.

4 Q. Where was that?

5 A. I worked full-time for the Town of
6 Ashfield, and I also worked for the police
7 department in the Town of Wendell.

8 Q. Sorry, the second town was?

9 A. Wendell.

10 Q. How long have you worked as a police
11 officer in Charlemont?

12 A. In Charlemont, I think about 10 years,
13 maybe 11 years.

14 Q. Has it always been part-time?

15 A. Yes.

16 Q. Who is the police chief there?

17 A. Jared Bellows.

18 Q. Does he work full-time?

19 A. No.

20 Q. How many people live in Charlemont?

21 A. I think our last census was somewhere
22 around 2,000 people.

23 Q. Other than you and Mr. Bellows, are there
24 other part-time officers in Charlemont?

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10

1 A. Yes.

2 Q. How many?

3 A. I'm not exactly sure. Last count I think
4 we had 16.

5 Q. And all of them work part-time?

6 A. Yes.

7 Q. And typically under a schedule that Chief
8 Bellows sets?

9 A. Yes.

10 Q. Do you know on average about how many hours
11 you worked in the last year? By week, for example.

12 A. Which job?

13 Q. The police officer job.

14 A. I have no idea.

15 Q. Is it typical for you to work an hour or
16 less in a given week?

17 A. No. Last night I just happened by the
18 station. Some stuff needed to be done in the office
19 so I stuck around and did it.

20 Q. Is it typical for you to work less than ten
21 hours in a week?

22 A. Yes.

23 Q. Let's go back to your work at Overwatch
24 Outpost. Why don't you describe what that business

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11

1 is.

2 A. We are an outfitter. I like to call it an
3 "outfitter."

4 Q. What do you mean by that?

5 A. We deal with all types of sportsmen. We
6 are an Orvis fly shop. We do guided fishing trips.
7 We sell guns and ammunition, gunsmithing, game
8 checking station, hunting and fishing licenses.

9 Q. Do you have a place of business?

10 A. Yes.

11 Q. What's the address?

12 A. 97 Main Street.

13 Q. Is that a storefront?

14 A. Yes.

15 Q. Is the business open 9:00 to 5:00? Why
16 don't you just tell me the hours of the business. I
17 apologize for asking the question the wrong way.

18 A. Wednesday through Sunday, 8:30 to 5:00. We
19 are closed Monday and Tuesday.

20 Q. Are there other employees at the business
21 besides you?

22 A. I have one employee.

23 Q. What's that employee's name?

24 A. John Kiablick.

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12

1 Q. At some point you are going to be asked to
2 spell Kiablick. Do you want to do it now?

3 A. Sure. It's K-i-a-b-l-i-c-k, I think.

4 Q. Is he full-time?

5 A. No.

6 Q. How many hours does he work a week?

7 A. He's worked about a total of three weeks
8 this year. So it's just when I need him, when I
9 need someone to cover the shop.

10 Q. Is he also a police officer?

11 A. No.

12 Q. So he's on call as a part-time employee; is
13 that fair?

14 A. I guess you could say that.

15 Q. He has another job?

16 A. He's retired.

17 Q. Other than working in connection with
18 Overwatch Outpost and as a police officer, have you
19 had other employment in the last ten years?

20 A. Yes.

21 Q. What other employment?

22 A. I was an armed nuclear security officer.

23 Q. What period of time?

24 A. 1994 until about two years ago, three years

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13

1 ago, when I opened Overwatch Outpost.

2 Q. Who did you work for?

3 A. Entergy. Well, actually when I started we
4 were contract employees. I worked for the Wackenhut
5 Corporation. Then eventually we were taken on as
6 Entergy employees.

7 Q. Was that a full-time job?

8 A. Yes.

9 Q. For the entire period you worked there?

10 A. Yes.

11 Q. Before 1994, did you work in any other
12 capacity?

13 A. I was a police officer, which we just
14 discussed.

15 Q. Could you briefly describe your educational
16 background.

17 A. I have a GED. I attended trade school in
18 Daytona Beach, Florida.

19 Q. The GED is the highest educational degree
20 you received?

21 A. Yes.

22 Q. That's a high school degree; is that correct?

23 A. Correct.

24 Q. Have you ever been in the military?

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1 A. No.

2 Q. Have you ever been tried for or convicted
3 of a crime?

4 A. No.

5 Q. Have you ever been involved on either side
6 of a domestic violence incident?

7 A. Involved?

8 Q. Yes.

9 A. Yes.

10 Q. In what capacity were you involved in a
11 domestic violence incident?

12 A. I was assaulted by a girlfriend.

13 Q. Assaulted with fists or with a weapon?

14 A. It was not with a weapon.

15 Q. When did you move to Massachusetts?

16 A. I've been here most of my life.

17 Q. Were you born in Massachusetts?

18 A. Yes.

19 Q. Was there a period of time you lived in
20 another state?

21 A. I lived in Florida for several years in the
22 late '80s/early '90s.

23 Q. You currently have a license to carry?

24 A. Yes.

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1 Q. It's unrestricted?

2 A. Yes.

3 Q. What jurisdiction is that issued by?

4 A. Charlemont.

5 Q. Do you know approximately when that was
6 issued?

7 A. Five years ago maybe.

8 Q. Did you have a license at any time prior to
9 that?

10 A. A firearms license?

11 Q. Firearms-related license, yes.

12 A. I've had a firearms license since I was
13 21 years old.

14 Q. Have any of your licenses ever been
15 suspended or terminated for any reason?

16 A. No.

17 Q. Have they ever lapsed for any reason?

18 A. No.

19 Q. Do you also have a license as a gun seller?

20 A. Yes.

21 Q. Who is the issuing authority on that?

22 A. Can you clarify which license you are
23 talking about.

24 Q. Why don't you tell me what kind of licenses

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1 you have relating to your gun sales business.

2 A. There are state licenses, Federal licenses,
3 local licenses.

4 Q. Let's start with the state license.

5 A. I do have a state license as a gun seller.

6 Q. What is the issuing authority on that
7 license?

8 A. That was issued through the Town of
9 Charlemont. I believe it's actually issued by the
10 state that it's done through, like the firearms
11 licenses are.

12 Q. Approximately when was that issued?

13 A. Approximately 2014.

14 Q. The same time that you started Overwatch
15 Outpost?

16 A. Yes.

17 Q. The chief that you currently work for, was
18 he involved in that licensing process?

19 A. Yes.

20 Q. Is he the name on the license?

21 A. Yes.

22 Q. What other licenses do you have relating to
23 the sale of guns?

24 A. I have a Federal firearms license.

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17

1 Q. Approximately when was that issued?

2 A. The same time.

3 Q. Also in connection with your commencement
4 of the Overwatch Outpost business?

5 A. Yes.

6 Q. Do you have any other licenses related to
7 the sale of guns?

8 A. I have a gunsmithing license.

9 Q. Is that issued by the state?

10 A. Yes.

11 Q. Is that issued by the Town of Charlemont?

12 A. Yes.

13 Q. Was the chief that you work for currently
14 also involved in the issuance of that license?

15 A. Yes.

16 Q. Would it be his name on that license?

17 A. Yes.

18 Q. Is Chief Bellows also a customer of the
19 business?

20 A. I guess you could say that.

21 Q. He's bought things from the business?

22 A. Yes.

23 Q. Does he get a discount of any kind?

24 A. No.

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18

1 Q. Has he ever bought a gun from the business?

2 A. Yes.

3 Q. Did he get a discount on that gun?

4 A. No.

5 Q. Has Chief Bellows ever been involved in an
6 inspection of the business?

7 A. No, I don't think so.

8 Q. Has anyone from the Town of Charlemont ever
9 inspected the business?

10 A. Possibly when I officially was opening the
11 store, there may have been an inspection. I don't
12 remember.

13 Q. If there was an inspection, was it someone
14 from the police department?

15 A. I don't remember. I remember the ATF
16 inspected it. The only one I honestly can remember
17 specifically is the ATF came in and did an inspection.

18 Q. As far as you know, there have been no
19 inspections since the business was opened?

20 A. Correct.

21 Q. What was the date the business was opened,
22 if you know?

23 A. I think it was October of 2014.

24 Q. I assume in one capacity or another, you've

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1 been trained on the use of various guns; is that
2 right?

3 A. Yes.

4 Q. Could you describe your training for me,
5 please.

6 A. Well, I've had training in my capacity as a
7 police officer. I have had a lot of training when I
8 did nuclear security. I received training as an NRA
9 firearms instructor. I received training as a
10 gunsmith. That pretty much sums it up.

11 Q. Did one or more of those trainings include
12 live fire?

13 A. Yes.

14 Q. Which ones?

15 A. Most of them. The NRA training required
16 live fire. The police training requires live fire.
17 The nuclear security work requires live fire.

18 Q. Are you required to requalify in connection
19 with the use of any particular gun for any
20 particular purpose?

21 A. Yes.

22 Q. Is that a live fire requalification
23 requirement?

24 A. Yes.

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1 Q. Is that associated with your work as a
2 police officer?

3 A. As a police officer and nuclear security
4 also.

5 Q. So which guns were you required to
6 requalify on as a nuclear security officer?

7 A. We carried a -- actually, could I talk to
8 my attorney for a second?

9 Q. Sure. You can step out if you need to. I
10 want to say that you are free to talk to your
11 attorney if it's a question about whether certain
12 information is privileged.

13 A. It may be potentially what they call
14 "safeguards information" through the nuclear -- I'm
15 having a brain cramp here.

16 MR. PORTER: You are saying it's
17 confidential governmental information?

18 THE WITNESS: That's correct, that's what
19 I'm trying to say.

20 MR. KLEIN: Does that carry a privilege,
21 Mr. Porter?

22 MR. PORTER: This is the first I've heard
23 of it. My concern would be, you know, did you sign
24 something saying you wouldn't disclose any of this

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1 information? Are you bound by an agreement of some
2 kind where you can't disclose what kind of firearm
3 you carried?

4 THE WITNESS: The armament that is used to
5 protect nuclear facilities is sort of guarded. They
6 prohibit the release of information, things like
7 number of security officers, number of people on a
8 shift, shift rotations, amount of ammunition
9 carried, types and numbers of weapons that are
10 carried. I mean, as long as we are not going to
11 violate any rules there, I don't mind testifying to
12 it.

13 MR. PORTER: Would you be able to describe
14 in the most general terms what kind of firearms you
15 were issued without violating that law?

16 THE WITNESS: I think so.

17 MR. PORTER: Why don't you do that. If
18 Gary has follow-up questions, we can see if we need
19 to take another step.

20 A. We carried semi-automatic handguns and
21 semi-automatic rifles.

22 I would just like to say I believe that
23 information is covered under 10CFR of the NRC's
24 regulations.

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22

1 Q. Were those issued to you in connection with
2 your job, the guns that you are talking about?

3 A. Yes.

4 Q. When you talk about carrying those kinds of
5 weapons, was it one of each type?

6 A. Yes.

7 Q. What kind of -- did you have large capacity
8 magazines for those weapons?

9 A. Yes.

10 Q. How large were those magazines?

11 A. We carried standard high capacity handgun
12 magazines and standard high capacity rifle
13 magazines.

14 Q. More than 10 rounds?

15 A. Yes.

16 Q. In each case, right?

17 A. Yes.

18 Q. Were you trained on the use of the weapons
19 that you were carrying at that time?

20 A. Yes.

21 Q. Were you required to qualify on a regular
22 basis with those weapons?

23 A. Yes.

24 Q. That requirement for requalification

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24

[REDACTED]

11 Q. Have you been required as a member of the
12 Charlemont Police force to qualify on those guns?

13 A. Yes.

14 Q. Have you done so?

15 A. I think I'm due now for a requalification.

16 Q. When you requalify, that includes the
17 requirement of live fire?

18 A. Yes.

19 Q. Have you ever used either of those guns in
20 connection with your duties as a police officer?

21 A. I use them every day as a police officer.

22 Q. Have you ever fired either of those guns in
23 connection with your duties as a police officer?

24 A. Yes.

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1 Q. In what context?

2 A. I have had to use them to put down an
3 animal that was hit by a car, that sort of thing,
4 never at a person.

5 Q. Have you ever fired a gun at a person in
6 any context?

7 A. No.

8 Q. Have you ever used any of your guns in a
9 self-defense context?

10 A. As a police officer?

11 Q. In any capacity.

12 A. Yes.

13 Q. In what capacity did you use a gun in
14 self-defense?

15 A. I didn't actually fire it, but I had to use
16 it as a police officer. I had to draw it on
17 multiple occasions as a police officer.

18 Q. When you did so, did you draw a holster gun
19 or a gun that you were carrying in some other way?

20 A. Usually it would be a holster gun.

21 Q. Usually or all the time?

22 A. I think all the time.

23 Q. Have you ever drawn an AR-15 in the context
24 of self-defense?

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1 A. I don't think so.

2 Q. Have you ever aimed the AR-15 at a person
3 in any context?

4 A. I don't think so.

[illegible]

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		(b) (6)	[REDACTED]
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17 Q. Are you familiar with an organization
18 called the "Gun Owners' Action League"?

19 A. I have heard of it.

20 Q. That's commonly referred to as "GOAL"; is
21 that right?

22 A. I believe so.

23 Q. If I use the term "GOAL," you'll understand
24 that to mean Gun Owners' Action League?

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1 A. Yes.

2 Q. Are you a member of GOAL?

3 A. I'm not sure. I have been. I don't know
4 if I've paid my dues or not.

5 Q. So there was a time that you were a member
6 of GOAL?

7 A. Yes.

8 Q. It's possible your membership lapsed?

9 A. Yes, possibly.

10 Q. Are you familiar with an organization
11 called the "National Rifle Association"?

12 A. Yes.

13 Q. Are you a member of the National Rifle
14 Association?

15 A. Yes.

16 Q. Has that membership lapsed?

17 A. No.

18 Q. Are you familiar with an organization
19 called "Commonwealth Second Amendment" or "Comm2A"?

20 A. I have heard of it.

21 Q. What is your understanding of what they do?

22 A. I don't know much about them.

23 Q. In what capacity have you heard of it?

24 A. Seeing postings on social media, maybe some

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1 printed ads. I really don't know much about Comm2A.

2 Q. Are you a member of any gun club?

3 A. Yes.

4 Q. Which club?

5 A. The Leyden Rifle Club.

6 Q. Do they have a shooting range there?

7 A. Yes.

8 Q. Do you use that shooting range?

9 A. Yes.

10 Q. Are you a member of any other organization
11 that primarily involves activities involving guns?

12 A. I'm a member of the Melha Shriners
13 Sportsmen's Club.

14 Q. What's the nature of that organization?

15 A. The Melha Shriners run the children's
16 hospitals.

17 Q. Anything else?

18 A. Nothing that pops out at me.

19 Q. Does Overwatch Outpost have an
20 organizational membership in any of the
21 organizations that we discussed?

22 A. I don't know.

23 Q. So you don't know, for example, if
24 Overwatch Outpost is an organizational member of

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1 GOAL?

2 A. I occasionally give money to groups such as
3 GOAL. I may have given them money under the name of
4 the business. I don't know.

5 Q. Thank you. Have you ever been employed by
6 any of those organizations?

7 A. No.

8 Q. Do you ever post on any information sites
9 that are sponsored by any of those organizations?

10 A. I don't know.

11 Q. Facebook page, for example?

12 A. I don't know.

13 Q. Have you ever posted on GOAL's website?

14 A. I don't know.

15 Q. Have you ever posted in any forum where you
16 expressed an opinion about this case?

17 A. Yes.

18 Q. What forum would that be?

19 A. On my business page.

20 Q. When you say your business page, is that a
21 page on your website?

22 A. Our Facebook page. We have a business
23 Facebook page.

24 Q. Any other business pages?

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1 A. I don't know.

2 Q. Have you ever posted on anyone else's page
3 an opinion about this case?

4 A. I don't know.

5 Q. You don't know because you don't remember?

6 A. Yes. I just don't remember.

7 Q. How did you first learn about the
8 possibility of participating as a plaintiff in this
9 case?

10 A. I believe it was through an email or it may
11 have been a social media post.

12 Q. Do you remember who the email or social
13 media post was from?

14 A. It was from the NRA. Who specifically, I
15 don't know.

16 Q. How did you respond to that email or social
17 media post?

18 A. I sent an email.

19 Q. Saying that you were interested in
20 participating?

21 A. Yes.

22 Q. Do you have a copy of that email?

23 A. No.

24 Q. Why not?

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1 A. I don't save emails.

2 Q. Do you have backup for your computer that
3 you use to send emails?

4 A. No. Most of it I do through my phone.

5 Q. Do you remember who that email was to?

6 A. No idea.

7 Q. What happened next?

8 A. Next I was contacted by someone who asked
9 me questions about my interest in the case.

10 Q. Do you remember who that person was?

11 A. Suzanne McCormack.

12 Q. Is that McComas?

13 A. Yes.

14 Q. M-c-C-o-m-a-s?

15 A. I guess so.

16 Q. Do you know who she works for?

17 A. I believe she works for the NRA.

18 Q. Did you provide information to her?

19 A. Yes, I believe so.

20 Q. Did you first hear from her by email?

21 A. No. I think she called me.

22 Q. The email that you sent her included your
23 telephone number, then?

24 A. Yes.

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1 Q. Is it fair to say that the email you sent
2 to express interest in the case was sent to her?

3 A. I don't know.

4 Q. It may have been sent to some other address
5 at the NRA?

6 A. I'm a technical idiot. I ask my
7 15-year-old son for computer advice.

8 Q. What type of email accounts do you have?

9 A. What do you mean by "what type"?

10 Q. What is your email address?

11 A. Overwatch@verizon.net.

12 Q. Verizon.net?

13 A. Yes.

14 Q. Is it your testimony that you regularly
15 delete emails off that system and don't maintain any
16 backup?

17 A. Correct.

18 Q. Are you compensating the lawyers for their
19 work on this case in any way?

20 A. I hope not. No, I don't believe I am.

21 Q. Is it your understanding you are not
22 legally obligated to do that?

23 A. Yes.

24 Q. What is your understanding of who is paying

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1 the costs and fees in this lawsuit?

2 A. I believe the NRA is paying the fees, but
3 I'm not entirely sure.

4 Q. Let's talk about Overwatch Outpost as a
5 business. I assume that you have a shop of some
6 kind?

7 A. Yes.

8 Q. About how many square feet is it?

9 A. The entire store is about 800 square feet,
10 but a lot of that is office space and bathrooms.

11 Q. What kind of merchandise do you display?

12 A. Fishing, hunting, shooting.

13 Q. Clothing?

14 A. Some.

15 Q. Anything else that you display? Do you
16 display gun parts, for example?

17 A. I don't display gun parts so much. It's
18 mostly -- it's not what you would probably think of
19 when you think of a gun shop. Specifically when I
20 opened my shop, I wanted more of a sportsmen's sort
21 of a place. Half of my shop, 50 percent, is
22 entirely dedicated to fly fishing. Half of it is
23 dedicated to hunting, shooting. We do have some
24 outdoor gear, things of that nature.

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1 Q. What percentage of your business comes from
2 the fishing side?

3 A. I can't give you an exact figure, but the
4 last time I was looking at my financial stuff, by
5 dollar value 70 percent of my sales are firearms
6 related, and about 30 percent is fishing related.
7 By volume of sales, it's exactly the opposite.
8 70 percent is fishing, and 30 percent is firearms
9 and hunting related.

10 Q. So is that generally because the hunting
11 and firearms related gear is more expensive?

12 A. I believe so.

13 Q. I believe your website says that Overwatch
14 Outpost is an Orvis retailer?

15 A. Correct.

16 Q. What's that mean?

17 A. It's an Orvis fly shop. We sell Orvis gear
18 and equipment, fly fishing.

19 Q. At present are there any particular makes
20 of guns that Overwatch Outpost maintains in its
21 inventory?

22 MR. PORTER: Objection to form. You can
23 answer if you know the answer to that question.

24 A. I don't understand the question.

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Q. You understand the concept that there are different makes and models of guns, right?

MR. PORTER: Objection to form.

A. Of course.

Q. Are there any particular makes or models of guns that Overwatch maintains in its inventory?

MR. PORTER: If you can answer the question, go ahead.

A. We have rifles, shotguns, handguns, pistols, revolvers.

[illegible]

Q. How many guns do you display at a given

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1 time?

2 A. All of them.

3 Q. All the inventory is displayed in the shop?

4 A. Unless I don't have room for it.

5 Q. At present do you have room for everything
6 that is in your inventory?

7 A. I think so.

8 Q. What would be the largest number of guns by
9 type that you have in the shop?

10 A. I don't think I really have any one
11 specific.

12 Q. Are there more rifles than shotguns, more
13 handguns than rifles?

14 A. I think it's pretty evenly disbursed.

15 Q. Between the three categories I mentioned?

16 A. Yes.

17 Q. Pretty evenly disbursed between handguns,
18 rifles and shotguns?

19 A. Yes.

20 Q. If you have questions about a gun that you
21 have not sold before, is the distributor generally
22 able to answer those questions?

23 A. Could you clarify that.

24 Q. If you have a question about a gun if you

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1 are considering selling a new gun, would your
2 distributor be able to answer questions about that
3 gun?

4 A. I think so.

5 Q. Technical questions?

6 A. Yes.

7 Q. If they don't know the answer, would you
8 expect them to get the answer from the manufacturer?

9 A. Yes, I suppose they would. Yes. Or I
10 would just contact the manufacturer directly.

11 Q. Do you do research on guns from time to
12 time?

13 A. Yes.

14 Q. How do you do that?

15 A. Mostly through web searches. Everything is
16 pretty much done through the internet nowadays. I
17 do read magazines and things like that on occasion.

18 Q. So you would be able to look at a
19 manufacturer's website if you needed to?

20 A. Sure.

21 Q. Just by what you described earlier as
22 technical incompetence.

23 A. Well, yes.

24 Q. You can perform web searches --

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1 A. Yes.

2 Q. -- and get on a manufacturer's website to
3 look at the nature and type of gun that you might be
4 interested in?

5 A. Yes.

6 Q. You also have access to distributors to
7 answer questions, right?

8 A. Yes.

9 Q. Do you have any large capacity magazines in
10 your inventory?

11 A. I believe so.

12 Q. By "large capacity," that would be
13 magazines with a capacity over 10, right?

14 A. Yes.

15 Q. When you get a large capacity magazine in
16 your inventory, what do you do to make sure that
17 it's legal to sell in Massachusetts?

18 A. Well, first of all, I don't know of a new
19 manufacturer of large capacity magazine that is
20 legal to sell in the State of Massachusetts. I sell
21 also to law enforcement. I occasionally have
22 magazines for law enforcement. Aside from that, it
23 would have to be what we refer to as a pre-ban
24 magazine.

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1 Q. Do you have pre-ban magazines in your
2 inventory at this time?

3 A. At the moment, I don't think I do. I may,
4 but nothing that I have out for, like, sale or
5 anything.

6 Q. Have you had them available for sale at any
7 time since Overwatch Outpost opened?

8 A. I sold some pre-ban magazines, yes.

9 Q. What do you do to make yourself comfortable
10 that a magazine is pre-ban?

11 A. They have to have a date stamp on them.

12 Q. Approximately how many magazines that are
13 pre-ban have you sold since Overwatch Outpost opened?

14 A. Not many. They usually will just come in
15 with a gun that's traded in or something. I don't
16 actively go out seeking them.

17 Q. If you wanted to have a pre-ban magazine,
18 do you know how to get one?

19 A. Not offhand. I guess I would have to look
20 around like anybody else.

21 Q. Have you ever been to a gun show where
22 pre-ban magazines are offered for sale?

23 A. I don't go to gun shows anymore.

24 Q. When did you stop?

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1 A. I think the last one I went to was probably
2 six or seven years ago.

3 Q. Would you describe yourself as someone who
4 is pretty familiar with different types of guns?

5 A. Sure.

6 Q. How they work?

7 A. Yes.

8 Q. Would you recognize different types of guns
9 on sight?

10 A. Yes.

■ ■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

14 Q. Are there other guns that are on the AR-15
15 platform?

16 A. Yes.

17 Q. Could you give me a list of a few of the
18 most common ones.

19 A. I know Bushmaster makes one. I know Ruger
20 makes one. I know Smith & Wesson makes one. I know
21 Colt makes one. They all make several different
22 models of them. Pretty much all of the
23 manufacturers that I know of have some form of an
24 AR-15 platform.

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1 Q. Is the Bushmaster AR-15 platform gun
2 typically referred to as a Bushmaster XM-15?

3 A. That's one of them.

4 Q. So the Ruger gun called the Ruger 556, is
5 that an AR-15 platform?

6 A. That's one of them, yes.

7 Q. The Smith & Wesson M&P 15, is that Smith &
8 Wesson an AR platform gun typically?

9 A. Yes.

10 Q. Is it fair to say that there are parts kits
11 for these kinds of guns?

12 A. Yes.

13 Q. And that you can get parts from other
14 manufacturers that fit into the AR-15 platform guns?

15 A. They are pretty standard, yes.

16 Q. Give me the names of some of the parts
17 manufacturers you are familiar with.

18 A. All of the major manufacturers make parts.

19 Q. Is it also fair to say that AR-15 platform
20 guns are often referred to in the gun community as
21 AR-15s?

22 A. Yes.

23 Q. Are you familiar with a gun called "AK-47"?

24 A. Yes.

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1 Q. What can you tell me about it?

2 A. What would you like to know about it?

3 Q. What kind of gun is it?

4 A. It's a semi-automatic rifle.

5 Q. Was that originally made for the Russian
6 military?

7 A. Are you talking about a military AK-47 or a
8 civilian type of AK-47?

9 Q. Start with the military AK-47. Is it true
10 that the AK-47 was originally developed for the
11 Russian military?

12 MR. PORTER: I'm going to object to the
13 form of the question. You can answer if you know.

14 He's here today in his capacity as a
15 30(b)(6) for his business. You of course can ask
16 him anything you want.

17 MR. KLEIN: Fair enough. I'll back up a
18 little.

19 Q. Have you sold any AK-47s in your shop?

20 A. Civilian variants. I have not sold any
21 machine guns out of my shop. There's quite a
22 difference between the two.

23 Q. Are the civilian variant AK-47s based on a
24 gun that was developed for the Russian military?

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1 A. I think that's fair to say.

2 Q. Are there other companies that manufacturer
3 guns that are recognizable to you as AK-47s?

4 A. Lots of them.

5 Q. Can you tell me the names of some of those
6 companies.

7 A. Century Arms make them. There's a company
8 in Vermont. I can't think of the name offhand,
9 maybe Windham. I don't know. I think a lot of them
10 are imported also. I honestly couldn't rattle off a
11 handful of different manufacturers on them.

12 Q. Is there a Romanian Arms variance of the
13 AK-47?

14 A. Yes, there are Romanian variants.

15 Q. Czech variants?

16 A. Yes.

17 Q. Again, Are these all guns based on the
18 AK-47 platform?

19 A. Yes.

20 Q. Again, are there kits available with parts
21 for these guns?

22 A. Yes.

23 Q. And they can be used in the different
24 variants of AK-47 platform guns?

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1	A. Some, yes.
---	---------------

2 Q. Is it fair to say that AK-47 platform guns
3 are -- strike that. Is it fair to say that the
4 AK-47 platform guns are often referred to in the gun
5 community as "AKs"?

6	A. Yes.
---	---------

7 Q. Or "AK-47s"?

8 A. Yes.

9 MR. KLEIN: Let's take a break at this
10 point. We'll see how much more we have.

11 (Recess at 10:27 a.m.)

12 BY MR. KLEIN: (10:37 a.m.)

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 Q. And helps in trainings sponsored by
2 Overwatch Outpost; is that a fair way to put it?

3 A. Yes.

4 Q. What other types of trainings does
5 Overwatch Outpost offer?

6 A. For firearms?

7 Q. Yes.

8 A. That's basically the only one we are
9 currently doing.

10 Q. Does Overwatch Outpost offer any live fire
11 trainings?

12 A. We can. We have not done any yet.

13 Q. In the complaint, one of the allegations is
14 that Overwatch Outpost wants to sell certain guns
15 that it no longer feels it can. Do you have a list
16 that you can give me of the guns that you would like
17 to sell that you feel you can't sell anymore?

18 A. There are a lot of them. Specifically I --
19 honestly, that's part of the problem. We don't know
20 what we can and can't sell.

21 Q. Well, what guns are you not selling that
22 you would otherwise sell?

23 A. Well, I mean, there are the obvious. We
24 know that we can't sell AR-15s, and we know that we

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1 can't sell AK-47s. After that, it's all who knows.

2 Q. What other guns are you concerned about
3 that you are not selling because of the current
4 status of the assault weapons ban in Massachusetts?

5 A. Pretty much I just steer clear of a whole
6 bunch of guns that I would normally sell just
7 because I'm not even sure. I can't get clarification.

8 Q. Give me one gun that you are not clear on.

9 A. Tavor.

10 Q. Semi-automatic Tavor?

11 A. Yes. N-PAP would be another, Century
12 N-PAP. I have no idea.

13 Q. Semi-automatic gun?

14 A. Yes.

15 Q. Who manufactures that?

16 A. I believe they are Century Arms. They are
17 made in Vermont.

18 Q. Did you sell any Tavors before July 20, 2016?

19 A. Yes.

20 Q. How many?

21 A. I don't know.

22 Q. Did you sell any handguns before July 20,
23 2016?

24 A. Yes.

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1 Q. How many?

2 A. I don't know. I can say that it was
3 between 30 and 40 percent of my business. Not
4 N-PAPs, but guns overall that I can no longer sell.

5 Q. What other guns can you no longer sell
6 besides the AR-15s, AK-47s, Tavor and N-PAP guns?

7 A. Pretty much anything that's not
8 specifically spelled out that I can sell I won't
9 sell because I just don't know, and I don't want to
10 get in trouble for it.

11 Q. Any other guns that you would be selling?

12 A. Sure.

13 Q. What other guns?

14 A. There are lots of different semi-automatic
15 rifles that have -- part of the problem here is in
16 the -- what's the word I'm looking for here... The
17 letter that was sent out by the Attorney General,
18 the July 20th letter, it says, "anything similar."
19 Well, define "similar." I don't know what "similar"
20 means.

21 Q. You told that us that you know a lot about
22 guns. What other guns are you not selling that you
23 would be selling?

24 A. Well, that's exactly my point. I do know a

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1 lot about guns. I can tell you that I'm vague on
2 what I can and I cannot sell. That's the problem.
3 That's why I'm here.

4 Q. Let's talk about the Tavor. That's one of
5 the guns you mentioned.

6 A. Go ahead.

7 Q. Have you made any inquiries about whether
8 or not it would meet the test in the Attorney
9 General's Enforcement Notice?

10 A. I have tried calling. The Attorney General
11 had a hotline.

12 Q. I'm not asking if you called the Attorney
13 General's Office. Did you call the distributor and
14 ask them?

15 A. Most of those distributors are in other
16 states.

17 Q. Did you call and ask them?

18 A. I wouldn't trust them anyway.

19 Q. Does your telephone reach other states?

20 MR. PORTER: Objection to the form. You
21 don't have to answer that. Come on.

22 Q. What about the N-PAP gun, have you called
23 anyone to ask whether that gun is going to meet the
24 test in the Attorney General's notice?

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1 A. Who would I call?

2 Q. Did you call the distributor who offers it
3 for sale?

4 A. Did I call the distributor?

5 Q. Yes.

6 A. I have had multiple conversations with the
7 distributors about which guns we can and can't sell.
8 They generally say, "We don't know. You will have
9 to check the laws in your own state."

10 Q. Did you ask them to check with the
11 manufacturer about whether or not it meets any of
12 the test?

13 A. I didn't specifically ask them.

14 Q. Did you do any research on the question?

15 A. Yes.

16 Q. In what form?

17 A. Web searches. I checked with other shops.
18 I called the Attorney General's hotline.

19 Q. Do you typically recognize an AR-15 when
20 you see one?

21 A. Yes.

22 Q. Do you typically recognize an AK-47 when
23 you see one?

24 A. Yes.

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[illegible]

[illegible]

A series of horizontal black bars of varying lengths, representing a redacted document. The bars are arranged in a list-like fashion, with some bars being significantly longer than others, suggesting different levels of redaction or different sections of text. The bars are solid black and have sharp edges.

[illegible]

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged in a single column. The lengths of the bars vary significantly, with the longest bar being the 10th bar from the top, and the shortest bars being the 1st and 20th bars. The bars are arranged in a roughly symmetrical pattern around the longest bar.

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1 halfway down, "Notice of Taking Deposition of
2 Plaintiff Overwatch Outpost"?

3 A. Yes.

4 Q. Is this a document you have seen before?

5 A. Yes.

6 Q. Have you reviewed it?

7 A. Yes.

8 Q. Do you see a list that says "Schedule A" on
9 Pages 3 and 4?

10 A. (Examines document) Yes.

11 Q. You understand that any questions in any of
12 those areas that you've been asked today is a
13 question that you are providing testimony about on
14 behalf of Overwatch Outpost?

15 A. Yes.

16 MR. PORTER: Hold on. I object to the form
17 of that question. The obvious exception being all
18 of the personal information that you asked.

19 MR. KLEIN: I think that was assumed in the
20 question itself. I understand the objection. As in
21 any 30(b)(6), we will potentially reserve on both
22 sides about whether or not a question is within the
23 scope of the 30(b)(6).

24 MR. PORTER: Sure.

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1 (Document marked as Ricko

2 Exhibit 2 for identification)

3 Q. You have in front of you a document labeled
4 as Exhibit 2. You see about halfway down it says,
5 "Requests for Production of Documents Pursuant to
6 Federal Rule of Civil Procedure 34," and then in
7 parenthesis below that it says, "Requests to
8 Plaintiff Overwatch Outpost"?

9 A. Yes.

10 Q. Is this a document that you have seen before?

11 A. Yes.

12 Q. Have you reviewed it?

13 A. Yes.

14 Q. If you go to the page that is the fourth
15 from the back of the document, it says, Requests for
16 production of documents -- sorry -- "Requests for
17 production"; do you see that?

18 A. Yes.

19 Q. And then there's 19 listed items that
20 continue for two pages from there, do you see that?

21 A. Yes.

22 Q. To the best of your knowledge, have you
23 provided your lawyers with all of the documents that
24 would be responsive to any of these areas?

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1 A. I think so.

2 MR. KLEIN: Let's take a short break. I
3 may be able to wrap up quickly after the break.

4 (Recess at 11:55 a.m.)

5 BY MR. KLEIN: (11:02 a.m.)

6 Q. Mr. Ricko, are you familiar with the term
7 "22 caliber rimfire round"?

8 A. Yes.

9 Q. Do you know what that is?

10 A. Yes.

11 Q. Are you familiar with 223 centerfire round?

12 A. Yes.

13 Q. Do you know what the difference is?

14 A. Yes.

15 Q. Can you describe it.

16 A. The 22 rimfire round doesn't have a central
17 primer like the 223 cartridge would have. The 223
18 cartridge is a rifle round. It's much larger than
19 the 22 caliber round. It has a primer in the center
20 of it that is struck by the firing pin to ignite the
21 detonation as it fires the round. The 22 caliber
22 has a rimfire, which is basically a liquid that goes
23 around the outside rim of the case, and the striker
24 or firing pin strikes the rim of the case, igniting

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1 the primer charge.

2 Q. Is it fair to say that those two different
3 rounds are very different?

4 A. Yes.

5 Q. They need to be fired from different kinds
6 of guns with different firing mechanisms?

7 A. Yes...

8 Q. Is it also fair --

9 MR. PORTER: Hold on a second. He's not
10 done. He was still answering the question.

11 Q. Go ahead.

12 A. There are kits that you can get so you can
13 actually take, let's say, a 223 caliber rifle and
14 put a 22 rimfire bolt in it, and you can shoot the
15 22 caliber bullets out of that gun. The caliber of
16 the round is actually the same. You can interchange
17 them, though. Some places, like police departments,
18 actually do that to save money on ammunition.

19 Q. But you would need a kit to make the
20 change, right?

21 A. You would need to change some parts, yes.

22 Q. Is it fair to say that a 22 caliber
23 rimfire round has less charge in it than a 223 round?

24 A. Yes.

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1 Q. It has less firing power, in other words,
2 right?

3 A. Yes.

4 Q. Are you familiar with the possibility of
5 converting an AR-15 to automatic fire with a kit?

6 A. Not unless you want to spend a long time in
7 prison.

8 Q. It's not legal, but you could do it, right?

9 A. That I'm not sure of. I don't know.

10 Q. Do you know if kits are available to make
11 that conversion?

12 A. Not that I've ever seen.

13 Q. Are you familiar with something called a
14 "Bump Stock"?

15 A. Yes.

16 Q. What is that?

17 A. I don't have a lot of experience with them.
18 I understand it's a stock that fits on a rifle that
19 allows you to shoot a little more rapidly with it.

20 Q. Does it simulate automatic fire?

21 A. Well, automatic fire by definition is one
22 pull of the trigger, and no, it does not do that.

23 Q. Does it simulate automatic fire in the
24 sense that if you have a Bump Stock, you don't need

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1 to pull the trigger for each round fired?

2 A. No. You would still need to pull the
3 trigger for each round fired.

4 Q. So how is it that it speeds up the rate of
5 fire?

6 A. I cannot explain the whole mechanics of it,
7 but you can do it without a Bump Fire kit. I think
8 the Bump Fire kit is just a gimmick, to be honest,
9 because you can simulate the same thing that that
10 does without anything at all.

11 Q. And what is simulated there, the more rapid
12 rate of fire on a semi-automatic weapon?

13 A. You can get it to fire faster, but you are
14 not changing it into a machine gun. You are not
15 making it fire more than one round with one pull of
16 the trigger.

17 Q. Thank you.

18 MR. KLEIN: I have no further questions.

19 MR. PORTER: No questions.

20 (Whereupon the deposition
21 was concluded at 11:08 a.m.)
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C E R T I F I C A T E

I, CHARLES M. RICKO, II, do hereby certify that
I have read the foregoing transcript of my
testimony, and further certify under the pains and
penalties of perjury that said transcript
(with/without) suggested corrections is a true and
accurate record of said testimony.

Dated at _____, this ____ day of _____,
2017.

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SUGGESTED CORRECTIONS

RE: David Seth Worman, et al., vs. Maura Healey,
et al.

WITNESS: Charles M. Ricko, II, Vol. I

The above-named witness wishes to make the following changes to the testimony as originally given:

PAGE	LINE	SHOULD READ	REASON
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1 COMMONWEALTH OF MASSACHUSETTS)

2 SUFFOLK, SS.)

3 I, Ken A. DiFraia, RPR and Notary Public in and
4 for the Commonwealth of Massachusetts, do hereby
5 certify that there came before me on the 13th day of
6 September, 2017, at 9:39 a.m., the person
7 hereinbefore named, who was by me duly sworn to
8 testify to the truth and nothing but the truth of
9 his knowledge touching and concerning the matters in
10 controversy in this cause; that he was thereupon
11 examined upon his oath, and his examination reduced
12 to typewriting under my direction; and that the
13 deposition is a true record of the testimony given
14 by the witness.

15 I further certify that I am neither attorney or
16 counsel for, nor related to or employed by, any
17 attorney or counsel employed by the parties hereto
18 or financially interested in the action.

19 In witness whereof, I have hereunto set my hand
20 and affixed my notarial seal this 27th day of
21 September, 2017.

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Under Federal Rule 30:
X Reading and Signing was requested
Reading and Signing was waived
Reading and Signing was not requested

Ken A. DiFraia

Notary Public
Commission expires 2/24/2023

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D I S C L A I M E R

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EXHIBIT 11
TO KAPLAN DECLARATION

In The Matter Of:
David Seth Worman, et al. vs.
Charles D. Baker, et al.

James Supica
Vol. 1
October 30, 2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
DAVID SETH WORMAN, et al.
Plaintiffs Case No.
vs. 1:17-cv-10107-WYG
CHARLES D. BAKER, et al.
Defendants
_____/

The deposition of JIM SUPICA was held on
Monday, October 30, 2017, commencing at 9:01 a.m., at
the Law Offices of Bradley Arant Boult Cummings, LLP,
1615 L Street, N.W., Suite 1350, Washington, D.C. 20036,
before Melinda Johnson, CSR, Notary Public.

REPORTED BY: Melinda Johnson, CSR

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PROCEEDINGS

Whereupon,

JIM SUPICA

called as a witness, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION BY MR. KLEIN:

Q Good morning, Mr. Supica. My name is Gary Klein. I'm one of the lawyers for the defendants in the case of Worman versus Baker.

That's the case in which you've offered an expert report for consideration by the Court, correct?

A Yes, sir.

Q Could you state your home and business address for the record.

A My business address is the NRA Museums Division, 11250 Waples, W-a-p-l-e-s, Mill Road, Fairfax, Virginia. [REDACTED]

Q And you've had your deposition taken before, correct?

1 A Yes, I have.

2 Q I know about the deposition in the Kolbe
3 case, the case about the assault weapons ban in
4 Maryland.

5 Have you had your deposition taken on other
6 occasions?

7 A I have.

8 Q Can you tell me what occasions they were in
9 to the best of your recollection.

10 A There was a case on a similar issue in
11 Chicago.

12 Q Was that the Cook County case --

13 A Yes, I think --

14 Q -- or the Highland Park case?

15 A One of those, yes.

16 Q That's fine.

17 A And I'm not sure I've been deposed as an
18 expert other times. I've offered expert opinions in a
19 couple other cases. Not many, but I don't know that
20 the others went to deposition. I don't really recall.

21 Q But you understand generally how a

1 deposition works, correct?

2 A Yes, sir.

3 Q And I just want to run through a couple of
4 ground rules so they're clear on the record.

5 If a question is unclear, I would ask you
6 to have me clarify it for you. If you answer the
7 question, I'm going to assume that you understood it,
8 right?

9 A Yes, sir.

10 Q And it's important that we not talk over
11 each other. That is, please wait for me to complete a
12 question before you answer, and I'll try to wait before
13 I ask another question, okay?

14 A Okay.

15 Q If you need a break at any time, just let
16 me know. We can always take a break.

17 And you understand, generally, that you're
18 -- strike that.

19 You understand that you're under oath and
20 all of your answers have to be truthful to the best of
21 your ability, correct?

1 A Yes, sir.

2 Q So I'm going to show you a document that's
3 labeled Exhibit Number 1.

4 (Exhibit No. 1 was marked for
5 identification.)

6 BY MR. KLEIN:

7 Q Do you recognize that document?

8 A I believe that is the subpoena I received
9 to testify at this deposition.

10 Q At the deposition today, right?

11 A Yes, sir.

12 Q Would you turn your attention briefly to
13 the third to the last page?

14 A "Notice of Deposition of John Supica"?

15 Q Yes. It says in the bottom paragraph:

16 "The deponent is directed to bring with him
17 his file for this matter, including but not limited to
18 correspondence, hand written notes, memoranda,
19 photographs, video recordings, studies, reports,
20 literature, spreadsheets, electronic communications, he
21 has reviewed or authored in regard to this matter."

1 Do you see that?

2 A Yes.

3 Q Have you done so?

4 A Yes.

5 Q I notice that there is a big stack of books
6 on the table behind you.

7 Is that part of what you've brought to the
8 deposition today?

9 A Those are the books that I referenced in
10 preparing my opinion. Counsel accumulated those for me
11 so I wouldn't have to haul them all down here.

12 Q Is there other responsive material that
13 you've brought with you?

14 A I brought a folder of the material that I
15 have reviewed. Some of this just very briefly, but,
16 yes that's --

17 Q Thank you.

18 A That's what we have.

19 Q So what I'd like to do is take a look at
20 that material probably during the lunch break, and if
21 we need to examine you on any of it, I will get some

1 copies from counsel here, okay?

2 A That sounds good.

3 Q Thank you.

4 (Exhibit No. 2 was marked for
5 identification.)

6 BY MR. KLEIN:

7 Q I'm going to show you a document that's
8 labeled Exhibit Number 2.

9 Is that your expert report in this case?

10 A Yes, it is.

11 Q Is that your signature on the first page of
12 the report?

13 A Yes.

14 Q And it's dated September 15, 2017.

15 Is there anything that you would need to
16 update in the month and a half that's passed since
17 September 15th of 2017?

18 A In looking through this, I notice that
19 there are a few typos, but there is nothing substantive
20 that needs to be changed that I'm aware of.

21 Q Are there typos you want to correct now?

1 A Perhaps we'll see them when we come to
2 them.

3 Q Okay. That's fine.

4 And I noted that this expert report is
5 similar to a report you prepared in a case called Kolbe
6 versus Maryland; is that right?

7 A Yes, sir.

8 Q Do you know if you made changes from the
9 Kolbe report before serving this expert report on us?

10 A Yes, I did.

11 Q In particular, what did you do to change
12 the report?

13 A I tried to orient it more towards the
14 applicable law in this case, so it's more Massachusetts
15 oriented than Maryland.

16 Q So when you say the "applicable law," you
17 mean the assault weapons ban that's being reviewed in
18 the Worman versus Baker case?

19 A Yes, sir.

20 Q Is it fair to say, though, that you started
21 with the report that you filed in Kolbe and made

1 changes to it --

2 A Yes.

3 Q -- and prepared it that way for this case?

4 A Yes.

5 Q And in connection with this case, are you
6 working with the same lawyers that you worked with in
7 the Kolbe case?

8 A Yes. The same firm.

9 Q Are there other cases where you're working
10 with that firm?

11 A No.

12 Q Just the Kolbe case --

13 A Yes, sir.

14 Q -- and this case?

15 A I can't remember if we worked together on
16 the Highland Park, Illinois case or not. That would be
17 the only other possibility.

18 Q Okay. And now you remember that the case
19 you worked on was Highland Park and not the Cook County
20 case?

21 A It might have been either or both.

1 Q Okay. Can you explain your understanding
2 of what the case in which this report is offered is
3 about?

4 A My understanding is that it is a challenge
5 to a Massachusetts law restricting so-called assault
6 weapons and magazine capacity -- magazines that have a
7 capacity of more than ten rounds.

8 Q Anything else?

9 A That's my understanding.

10 Q Did you review the complaint in this
11 matter?

12 A I believe I did.

13 Q Did you review the answer --

14 A Very -- I'm sorry, very briefly.

15 Q Did you review the answer of the
16 Commonwealth?

17 A I don't know that I did. If I did, it
18 would be in this stack here.

19 Q Did you review anything else that's
20 specifically relevant to the matter in court?

21 MR. SWEENEY: Objection.

1 You may answer.

2 THE WITNESS: Thank you.

3 I reviewed a stack of documents that I
4 understand are related to the case. Those are what
5 I've provided.

6 BY MR. KLEIN:

7 Q Did you review any deposition testimony of
8 any party to the case?

9 A I don't think that I did. I don't recall
10 doing so.

11 Q Did you review the assault weapons ban at
12 issue?

13 A Yes, I believe I did.

14 Q Did you review any documents relevant to
15 the Massachusetts law of self-defense?

16 A I don't recall anything that was titled
17 that way.

18 Q What is your understanding of the
19 Massachusetts law of self-defense?

20 A I'm not sure what it is.

21 Q Can you describe for me the area in which

1 you believe you have special expertise relative to this
2 matter?

3 A I have special expertise in firearms
4 history.

5 Q Anything else?

6 A There would be a number of subfields that
7 are related to that. My primary expertise is firearms
8 history.

9 Q What subfields are you thinking about?

10 A Firearms technology, use of defensive
11 firearms. I think those might be primary.

12 Q And when you say "use of defensive
13 firearms," what's your definition of a defensive
14 firearm?

15 A That would be a justified and legal
16 civilian use of a firearm in personal defense.

17 Q So is it fair to say what you're talking
18 about is defensive use of a firearm?

19 A Yes, I think that's fair.

20 Q And there is no particular firearm that's
21 only useful in self-defense, right?

1 A That's correct.

2 Q Firearms can be used also for offensive
3 purposes?

4 A Firearms can be used for a number of
5 purposes.

6 Q Including criminal purposes?

7 A Yes, they are.

8 Q And including mass shootings, right?

9 A Yes, they are.

10 Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1

2

Q Have you ever fired a machine gun?

3

A Yes.

4

Q In what context?

5

A In working for the museum, we periodically have machine gun shoots. And also for a television show that I do. We sometimes feature machine guns on the show, and I shoot them for the show.

9

Q And those are guns that are owned by the NRA?

10

11

A Usually by the NRA, yes.

12

Q When you say "usually," who else might own the machine guns you fire?

13

14

A If we're visiting a collector for the television show, it might be owned by that collector. I can't recall the ownership of every machine gun that I've shot.

17

18

Q Is there video of you shooting machine guns?

19

20

A I think there are several.

21

Q And do you personally have a machine gun

1 license?

2 A No, I don't.

3 Q Do you own any machine guns?

4 A No, I don't.

5 Q Do you own any select fire weapons?

6 A No, I don't. And I'd just like to clarify.
7 I'm assuming by "machine gun," you would include select
8 fire as a subset of machine gun.

9 Q We're going to get to that, but let's do
10 that now.

11 What's your understanding of what "select
12 fire" means?

13 A A select fire is a gun that can be fired
14 either semi-automatically, which means that one pull of
15 the trigger fires one shot, or it can be switched to
16 full-automatic mode.

17 Generally that means that if you hold the
18 trigger back, the gun keeps firing until it's empty.
19 In some cases, that can be a burst-fire function where
20 a limited number of rounds is fired while the trigger
21 is held back. Usually that's three rounds.

1 Q And then you'd have to pull the trigger
2 again for three more rounds to load?

3 A Yes, sir.

4 Q And when you say "fired until the gun is
5 empty," what you mean is until the magazine containing
6 ammunition is empty, right?

7 A Yes. The ammunition that the gun holds.
8 Yes, sir.

9 Q And then you could put another magazine in
10 and fire that one in the same way until it's empty,
11 correct?

12 A Yes.

13 Q Now, a semi-automatic gun will fire with
14 each pull of the trigger also until the magazine is
15 empty, correct?

16 A Yes, sir.

17 Q And so when you use that term "select
18 fire," you're talking about a gun that can fire in any
19 of those modes, correct?

20 A Not necessarily. Usually it will be
21 limited to two modes -- either semi-automatic and burst

1 fire or semi-automatic and full-automatic. I think
2 there are some that have all these modes.

3 Q And typically there would be a switch on
4 the guns that you can put it into any of the modes?

5 A I believe always, yes.

6 Q Okay. And that's --

7 A There is one exception at least to that,
8 but usually that's the case.

9 Q And what's the exception?

10 A The one I'm thinking of is, I believe, an
11 Italian submachine gun from World World II. It has two
12 triggers -- one for semi-automatic fire and one for
13 full-automatic fire.

14 Q All the other guns have some sort of a
15 switch between modes, correct?

16 A The vast majority do.

17 Q So when we use the term "select fire," over
18 the course of the day, we'll try to both understand
19 that to mean a gun that can switch back and forth
20 between modes, okay?

21 A Okay.

1 Q And there are also pure machine guns,
2 right?

3 A Yes, there are.

4 Q And those are guns that always fire
5 automatically until -- with the single pull of the
6 trigger until the magazine is empty, right?

7 A So long as the trigger is held back.

8 Q Right.

9 And there is also guns that are just
10 semi-automatic, correct?

11 A Yes.

12 Q And those can only be fired by pulling the
13 trigger each time you want a shot to go?

14 A One trigger pull, one shot.

15 Q So we'll try to use those terms as well and
16 distinguish them from select fire over the course of
17 the day, okay?

18 A Okay.

19 Q I understand you're trained as a lawyer; is
20 that right?

21 A I am.

1 Q Where did you go to law school?

2 A University of Kansas Law School.

3 Q What year did you get your degree?

4 A 1980.

5 Q Have you ever practiced as a lawyer?

6 A Yes. I practiced as corporate counsel for
7 United Construction Company for about 11 years.

8 Q What kind of a business is United
9 Construction Company?

10 A It's a highway construction company.

11 Q Is that a family-owned business?

12 A Yes.

13 Q Is it still a business that your family
14 owns?

15 A No.

16 Q And what period of time were you corporate
17 counsel?

18 A 1980 to 1991, I believe.

19 Q Did you practice in court at all?

20 A No. No, I didn't.

21 Q Have you ever had a case load of any kind?

1 A What's a case load?

2 Q Where you have your own set of cases that
3 would have separate clients from your family-owned
4 business attached to them.

5 A No. The only client I worked for was
6 United Construction.

7 Q What did your legal work consist of at
8 United Construction?

9 A My legal work was part of what I did. I
10 also did general administrative work for the company.
11 The legal work that I did do involved contract law,
12 government regulations, a little bit of workers' comp
13 type law, just a little bit of litigation, not a great
14 deal.

15 Q Have you ever represented a party in any
16 case related to gun ownership?

17 A Not as a lawyer, no.

18 Q Have you ever represented any party in
19 relationship to guns in any way?

20 A As an expert witness. We've discussed
21 that.

1 Q But not as a lawyer?

2 A That's correct.

3 Q And is it fair to say you're not here to
4 give legal opinions of any kind?

5 A That's correct.

6 Q Including legal opinions on the Second
7 Amendment, right?

8 A That's right.

9 Q You're not here to give legal opinions on
10 the scope of the right to use a gun in self-defense
11 under Massachusetts law, are you?

12 A That's correct.

13 Q Tell me about your current position.

14 A I am Director of the NRA Museums Division.

15 Q Does that mean you work for the NRA?

16 A Yes, it does.

17 Q You're an NRA employee?

18 A Yes.

19 Q About how long have you been an NRA
20 employee?

21 A Nine years.

1 Q Since about 2008?

2 A Yes.

3 Q Math on the fly is always --

4 A That's pretty good. Years are tough.

5 Q And what do you do in connection with your
6 current position?

7 A I'm responsible for the operation of the
8 two major NRA museums. I manage the museum staff. I
9 manage the museum's various media efforts.

10 Q Can you describe those media efforts.

11 A They would include television, Internet
12 platforms including social media, and publications.

13 Q Were you ever called to give opinions on
14 gun issues in connection with the museum's media
15 efforts?

16 A On political or legal gun issues?

17 Q Well, let's start with political.

18 A No.

19 Q Are you ever called on to give opinions
20 about legal issues related to guns in connection with
21 your work for the NRA museums?

1 A No.

2 Q And you don't do that?

3 A I don't.

4 Q About how many people work for you?

5 A About seven full time, two part time, and a
6 few volunteers.

7 Q And do those folks work exclusively for NRA
8 museums?

9 A Yes. Except for the volunteers. Our
10 part-timers, I think, are retired. I think we're their
11 only paid employer, but I don't know that for sure.

12 Q Who do you report to?

13 A I report to Joe DeBergalis.

14 Q What's his position?

15 A He is Assistant -- I may get this wrong.
16 I'll try my best. Assistant Director -- Assistant
17 Executive Director of General Operations.

18 Q Does he work in the same physical location
19 as you do?

20 A He works in the same building but not in
21 the museum offices.

1 Q Do you see him every day?

2 A No.

3 Q How do you typically communicate with him?

4 A E-mail or phone calls, and I'll see him
5 occasionally.

6 Q And who does Mr. DeBergalis report to?

7 A He reports to Josh Powell.

8 Q What's is Mr. Powell's position?

9 A Executive Director of General Operations,
10 I believe. I think he has another title too, and I
11 don't recall that at the moment.

12 Q Does he work in the same location?

13 A I believe he does.

14 Q Do you have any direct communication with
15 Mr. Powell?

16 A Very rarely.

17 Q Do you know who Mr. Powell reports to?

18 A Who he works for?

19 Q Who does he report to?

20 A Wayne LaPierre.

21 Q What's Mr. LaPierre's position?

1 A He is the Executive Vice President of NRA.

2 Q Does he work in the same physical location?

3 A I believe he does.

4 Q Do you see him fairly regularly?

5 A No.

6 Q Do you have any direct communication with
7 Mr. LaPierre?

8 A No. Generally, not.

9 Q When you say "generally not," does that
10 mean you sometimes see him and talk to him?

11 A We just say, "Hi" generally. Very seldom
12 anything related to the museum. Generally, I would go
13 through the chain of command for anything that has to
14 do with my responsibilities.

15 Q Do you get memos from time to time from
16 Mr. LaPierre?

17 A Mr. LaPierre sends out a weekly sort of
18 newsletter to all NRA employees. I receive that.

19 Q What kinds of things are discussed in the
20 newsletter?

21 A Usually it will be links to media reports,

1 social media things, or other things that the NRA is
2 involved with.

3 Q Do you have any contact with the Board of
4 Directors of the NRA?

5 A I do.

6 Q In what capacity?

7 A I am the secretary of the Gun Collectors
8 Committee for the NRA, which is a committee of the
9 board. And so I attend all the board of directors
10 meetings, both to help with the gun collectors
11 committee meetings and sit in on the board meetings.

12 Q Is it fair to say that you could be fired
13 if your service displeases your superiors?

14 MR. SWEENEY: Objection.

15 THE WITNESS: Yes.

16 BY MR. KLEIN:

17 Q Is it fair to say you could be fired if
18 your service displeases the board of directors?

19 MR. SWEENEY: Objection.

20 THE WITNESS: I would doubt that the board
21 of directors would get directly involved in personnel

1 decisions.

2 BY MR. KLEIN:

3 Q But they could if they wanted to, couldn't
4 they?

5 A I assume they could.

6 Q And you understand that if you express
7 opinions that are inconsistent with the opinions of the
8 NRA that might be a reason that you might be fired?

9 MR. SWEENEY: Objection.

10 THE WITNESS: I'm not sure that it would
11 be. I just don't really know on that.

12 BY MR. KLEIN:

13 Q So if you were to use your media platform
14 to talk about the importance of regulating guns, would
15 you expect to keep your job at the NRA?

16 MR. SWEENEY: Objection.

17 THE WITNESS: Well, that's not part of my
18 job, so I would not use my social media platform for
19 that.

20 BY MR. KLEIN:

21 Q But if you did, you wouldn't expect to keep

1 your job, would you?

2 MR. SWEENEY: Objection.

3 THE WITNESS: Wouldn't do it.

4 BY MR. KLEIN:

5 Q But if you did do it, would you expect to
6 keep your job?

7 MR. SWEENEY: Objection. Asked answered.

8 THE WITNESS: Ask again, please.

9 BY MR. KLEIN:

10 Q If you did use your media platform to take
11 positions that were inconsistent with those of the NRA,
12 you understand that you might be fired for that, right?

13 MR. SWEENEY: Objection.

14 THE WITNESS: There are any number of
15 things that I could do that would get me fired, and I
16 assume that could be one of them.

17 BY MR. KLEIN:

18 Q Besides your work at the NRA, do you have
19 other paid positions?

20 A I receive royalties for writing, but other
21 than that, no.

1 Q What percentage of your income is your
2 salary from the NRA?

3 A The vast majority.

4 Q More than 90 percent?

5 A Probably, I'm sure.

6 Q Are you also an NRA member?

7 A Yes, I am.

8 Q How long have you been an NRA member?

9 A Probably around 20 years. I'm not sure --
10 no, longer than that. Probably closer to 30 years.

11 Q And does the NRA have different tiers of
12 membership?

13 A Yes, they do.

14 Q What tier of membership are you in?

15 A A benefactor.

16 Q And where does that rank among the tiers of
17 membership at the NRA?

18 A That's top in terms of standard
19 memberships.

20 Q Do you pay additional dues to qualify as a
21 benefactor member?

1 A It's a one-time payment.

2 Q How much is the one-time payment?

3 A I don't recall.

4 Q Is it in the thousands of dollars?

5 A No. I'm sure it's not. I don't think it
6 is. I always tried to upgrade my membership when it
7 was on sale, so I bought it cheaper than the list
8 price, I'm sure.

9 MR. SWEENEY: We'll designate a portion of
10 this transcript as confidential if necessary.

11 BY MR. KLEIN:

12 Q Do you remember when you became a
13 benefactor member?

14 A I don't.

15 Q Do you pay yearly dues?

16 A No. It's the higher levels of
17 membership -- life and above are a one-time payment for
18 the membership.

19 Q And you've made that one-time payment?

20 A Yes, I have.

21 Q Does that mean you're a lifetime member of

1 the NRA?

2 A I'm pretty sure benefactor members are part
3 of the group of members that are considered life
4 members.

5 Q Is it fair to say that as a general matter
6 you support the NRA's position on legal issues?

7 MR. SWEENEY: Objection.

8 THE WITNESS: I generally do.

9 BY MR. KLEIN:

10 Q Do you support the NRA's position on policy
11 issues?

12 MR. SWEENEY: Objection.

13 THE WITNESS: On what, please?

14 BY MR. KLEIN:

15 Q Policy issues?

16 A Can you explain what a policy issue is.

17 Q When they take a position about a matter of
18 public policy, would you typically support the NRA's
19 position?

20 A Not necessarily always, but usually I do.
21 And let me say that about political issues, which you

1 asked earlier. Not always, but usually I do support
2 the NRA's position.

3 Q Can you tell me any NRA positions that you
4 disagree with?

5 A Not off the top of my head.

6 Q But you've, for a period of time, served as
7 a member of the board of directors of the NRA, correct?

8 A Yes, sir.

9 Q What period of time was that?

10 A About seven years.

11 Q Do you remember the time period?

12 A Pardon?

13 Q Do you remember the time period?

14 A About 2001 to 2008.

15 Q How many terms were encompassed in that
16 period?

17 A I was elected three times.

18 Q So you served two full terms and parts of a
19 third?

20 A Yes, sir.

21 Q Each term is three years?

1 A Yes, sir.

2 Q Were you paid for board service?

3 A No.

4 Q Were you a board member in the time period
5 that you were general counsel of your family business?

6 A No.

7 Q What were you doing to earn money when you
8 were a board member of the NRA?

9 A I had an antique and collectible firearms
10 business, and that's what I was doing.

11 Q What were your responsibilities as a board
12 member?

13 A The board of directors is the governing
14 body of the NRA, so they would generally set the
15 direction for the organization. The board relies
16 heavily on a number of committees that report to the
17 board, and I served on some of those committees.

18 Q Do you remember the committees that you
19 served on?

20 A I served on the Gun Collectors Committee.
21 I served on the Publications Policies Committee. I

1 think there was a third committee that I was involved
2 with for a briefer period of time, but I don't recall
3 what it was right off the top of my head.

4 Q Were you ever involved in the NRA's legal
5 decision-making?

6 A No.

7 MR. SWEENEY: Objection.

8 BY MR. KLEIN:

9 Q Have you ever had input into any legal
10 decision that the NRA made?

11 MR. SWEENEY: Objection.

12 THE WITNESS: No.

13 BY MR. KLEIN:

14 Q Have you ever been asked for your input?

15 A Other than offering expert opinion in the
16 cases that we've discussed, no.

17 Q Were you ever consulted about an issue
18 before the NRA filed a case for your expert opinion?

19 A Before the NRA filed a case, no.

20 Q Were you involved at all in the Heller
21 case?

1 A I'm pretty sure not.

2 Q Have you provided any legal assistance of
3 any kind to the NRA?

4 MR. SWEENEY: Objection.

5 THE WITNESS: No.

6 BY MR. KLEIN:

7 Q Have you provided any legal assistance of
8 any kind to any board member of the NRA?

9 A No. Let me go back to the previous
10 question too. Other than the expert opinions that
11 we've discussed.

12 Q I think we can exclude those.

13 A Thank you.

14 Q I understand your testimony to be that your
15 expert opinions are not legal opinions, correct?

16 A Yes, sir. Good.

17 Q So I wouldn't include them when I ask a
18 question about whether you offered legal opinions --

19 A Thank you.

20 Q -- on any issues to the NRA, okay?

21 A Thank you.

1 Q Have you provided any legal opinions to any
2 officer of the NRA?

3 A No.

4 Q Any legal assistance of any kind?

5 A No.

6 Q Do you currently have legal malpractice
7 insurance?

8 A No.

9 Q Have you ever made recommendations to
10 anyone at the NRA about policies that the NRA might
11 pursue?

12 A What kind of policies?

13 Q Any policies of any kind at all.

14 A I would make recommendations as to policies
15 for the NRA Museum Division.

16 Q In preparing your report in this matter,
17 was it your intention that your legal opinions advance
18 the goals of the NRA?

19 MR. SWEENEY: Objection. He's already said
20 they're not legal opinions.

21 MR. KLEIN: Fair enough.

1 BY MR. KLEIN:

2 Q You can answer.

3 A There aren't legal opinions in here.

4 Q Is it fair to say it was your intention
5 that your expert opinions advance the goals of the NRA?

6 A My intention was to give my expert opinion
7 in response to the questions raised in this case, and I
8 understand that the NRA is involved in and supporting
9 this case.

10 Q So it's fair to say that your intention was
11 for your expert opinions to support the NRA's goals in
12 this case?

13 A Yes, sir.

14 Q And is it fair to say that your expert
15 opinion was intended to advance the NRA's positions
16 about the meaning of the Second Amendment?

17 A My primary intention is to respond honestly
18 to this -- the facts in this case.

19 Would you please ask that question again.

20 Q Is it fair to say that your intention is
21 that your expert opinions advance the NRA's position

1 about the meaning of the Second Amendment?

2 A It would please me if that happened.

3 Q Let's -- if you don't mind turning to
4 Page 33 of your report in this matter, which is
5 Exhibit 2.

6 A Yes, sir.

7 Q Starting near the bottom of Page 33, there
8 is a list under the heading "Expert Witness and
9 Consulting."

10 Do you see that?

11 A Yes, sir.

12 Q First case there is Worman versus Baker.
13 That's this case, right?

14 A Yes, sir.

15 Q And, in this case, your opinions are on
16 behalf of Mr. Worman and his side of the case, right?

17 A Yes, sir.

18 Q And they are in support of his position
19 that the guns and large-capacity magazines at issue
20 should not be regulated, right?

21 MR. SWEENEY: Objection.

1 THE WITNESS: Yes, sir. Other than to the
2 extent that they already are.

3 BY MR. KLEIN:

4 Q That they already are?

5 A I'm sorry.

6 MR. SWEENEY: Objection.

7 THE WITNESS: Let me rephrase that.

8 MR. KLEIN: I think that would be better,
9 yeah.

10 THE WITNESS: Yeah, that they should not be
11 regulated differently than other firearms and
12 magazines.

13 BY MR. KLEIN:

14 Q And that was true of the matter Kolbe
15 versus Hogan as well, right?

16 A I think they were very similar issues.

17 Q And, again, your testimony there was on
18 behalf of Mr. Kolbe and his side of the case, right?

19 A Yes, sir.

20 Q And intended to challenge the regulation of
21 firearms in large-capacity magazines?

1 MR. SWEENEY: Objection.

2 THE WITNESS: To challenge the regulation
3 of so-called assault-style firearms and high-capacity
4 magazines or large-capacity magazines.

5 BY MR. KLEIN:

6 Q And in support of that challenge, right?

7 A Yes, sir.

8 Q And encoding firearms museum design review
9 panel, what did you do?

10 A That's consulting. I haven't done a great
11 deal on that yet.

12 Q What about JM Davis Foundation versus the
13 State of Oklahoma?

14 A I offered expert opinion on the operation
15 of the JM Davis Museum in support of the continued
16 operation of the museum.

17 Q And what was the challenge to the continued
18 operation of that museum?

19 A The challenge was whether the museum was
20 giving appropriate curatorial care to the firearms in
21 the collection.

1 Q When you say "curatorial care," what do you
2 mean?

3 A Preserving the firearms appropriately and
4 displaying them appropriately.

5 Q Was there a concern about the way they were
6 being secured?

7 A Their primary concern was about the
8 custodial care, whether they were being properly
9 preserved. I don't know that security was a major
10 concern in that.

11 Q But it was some part of a concern?

12 A It may have been. I'm just not certain.
13 It was definitely was not the primary focus.

14 Q Did you offer an expert opinion in the next
15 matter Wilson, et al., versus County of Cook, Illinois?

16 A Yes, I did.

17 Q On which side of the case?

18 A I was opposed to the so-called assault
19 weapons ban.

20 Q Did you offer expert opinion in connection
21 with Friedman and the Illinois State Rifle Association

1 versus the City of Highland Park?

2 A Yes, sir.

3 Q On what side of that case?

4 A That is going to be the same general
5 principle as the previous assault-weapon-related cases.

6 Q Meaning that your testimony was intended to
7 oppose the regulation of assault weapons?

8 MR. SWEENEY: Objection.

9 THE WITNESS: It was opposed to a different
10 regulation of assault weapons, so-called assault
11 weapons, and other similar firearms.

12 BY MR. KLEIN:

13 Q And that means your testimony was on behalf
14 of Friedman and the Illinois State Rifle Association?

15 A Yes, sir.

16 Q Do you remember the counsel that you worked
17 with in that case?

18 A No, I don't.

19 Q And I notice in the Wilson case you
20 mentioned that you did have your deposition taken.

21 Does that refresh your recollection on the

1 issue we discussed earlier?

2 A Yeah, and there should be a deposition for
3 that.

4 Q Do you remember the counsel that you worked
5 for in that case?

6 A No, I don't.

7 Q And you don't know whether you had your
8 deposition taken in the Friedman case, do you?

9 A I don't think I did.

10 Q And then below that, there is a case called
11 Tardy versus O'Malley.

12 Do you see that?

13 A Yes, sir.

14 Q Do you remember what that case was about?

15 A It was a similar issue to the others.

16 Q Similar to the Kolbe case in Maryland?

17 A Yes, sir.

18 Q And which side did you testify on?

19 A I testified for the party challenging the
20 so-called assault weapons ban.

21 Q Have you ever offered expert testimony in

1 support of a regulation of assault weapons?

2 A No, I haven't.

3 Q Have you ever offered testimony in support
4 of a regulation on large-capacity magazines?

5 A No, I have not.

6 Q Have you ever offered testimony in support
7 of any type of regulations on guns or magazines?

8 A I don't recall if my testimony in any of
9 these may have swerved into other types of firearms
10 regulations or not.

11 Q Meaning that there could have been an issue
12 inside one of these cases where your testimony
13 supported the regulation of the firearms?

14 A There could be.

15 Q The firearms at issue or just in a general
16 sense?

17 A Say again, please.

18 Q Was your testimony in any of these cases in
19 support of regulation of the firearms at issue in the
20 case?

21 A No, it was never in support of regulation

1 of the firearms at issue.

2 Q I notice in the depositions I've looked at
3 that your testimony sometimes suggests that you are
4 comfortable with regulation of machine guns; is that
5 right?

6 A Yes.

7 Q And does that mean you would support
8 regulation of machine guns?

9 A I would say that I find the regulations on
10 machine guns to be reasonable and acceptable. It's
11 possible that they might be improved, but I haven't
12 given it a lot of thought and study.

13 Q Would you also support regulation on
14 select-fire weapons?

15 A Those would be a subset of machine guns.

16 Q And what is the basis in which you are
17 comfortable with the regulation of machine guns but
18 uncomfortable with the regulation of semi-automatic
19 rifles?

20 A The current regulations on machine guns
21 have been accepted law for quite a while. They seem to

1 have worked and been acceptable. I'm not sure it's
2 optimal.

3 I think at some point there is a
4 distinction between firearms that are appropriate as
5 individually-aimed weapons and firearms that tend to be
6 more military-oriented that might be more area weapons
7 than individual.

8 Q So when you refer to something as an
9 "individually-aimed weapon," what are you referring to?

10 A I'm referring to a gun that shoots one
11 aimed shot at a time.

12 Q You can also aim a machine gun, correct?

13 A Yes, you can.

14 Q I presume you'd want to do that in order to
15 make sure you're hitting what you intend to hit, right?

16 A Yes.

17 Q And you can also fire a semi-automatic
18 rifle indiscriminantly, correct?

19 MR. SWEENEY: Objection.

20 THE WITNESS: You can fire any firearm
21 indiscriminantly including semi-automatic rifles.

1 BY MR. KLEIN:

2 Q Meaning you can fire it without aiming at
3 any particular target, right?

4 A True of any firearm.

5 Q Now, you mentioned that the regulation of
6 machine guns has been with us for some time, right?

7 A Yes, sir.

8 Q Approximately when were machine guns first
9 regulated?

10 A I think it was 1934 that the primary
11 restriction was passed. I'm not sure of that year, and
12 I don't know if there were other restrictions before
13 that or not.

14 Q The first assault weapons ban was enacted
15 in 1994, was it not?

16 A I don't know the year, but that sounds
17 about right.

18 Q Federal assault weapons ban, do you not
19 remember the year it was enacted?

20 A I don't remember the year, no. But that
21 sounds about right. I could accept that.

1 Q So it's about 24 years, right?

2 A That sounds right, but you're the one with
3 the year math.

4 Q Let me do the calculation more carefully.

5 A Just so I'm sure we're talking about the
6 same regulation, I believe that's the one that
7 sunsetted out after a number of years.

8 Q Correct. But do you have any sense of when
9 the Massachusetts assault weapon ban went into effect?

10 A From the language, it sounded as if it
11 might be in the same area.

12 Q In the '90s?

13 A Yeah, but I don't remember for sure when it
14 was.

15 Q If I told you that the Massachusetts
16 assault weapon ban has been in effect for more than
17 20 years, would you agree with me?

18 A I would believe you.

19 Q And do you have any basis to believe that
20 it's not accepted in Massachusetts?

21 MR. SWEENEY: Objection.

1 THE WITNESS: Well, I'm sure there are a
2 number of people in Massachusetts who don't accept it.

3 BY MR. KLEIN:

4 Q Do you believe there are a number of people
5 in Massachusetts who don't accept the regulation on
6 machine guns?

7 A Probably fewer, but there may be. There
8 are people who disagree with a number of different laws
9 and regulations.

10 Q Are you aware of whether the NRA previously
11 challenged the Massachusetts assault weapon ban?

12 A I'm not aware.

13 MR. SWEENEY: Objection.

14 BY MR. KLEIN:

15 Q Do you know whether there was a case that
16 the NRA supported challenging the assault weapons ban?

17 A The federal assault weapons ban?

18 Q The Massachusetts assault weapon ban.

19 A No, I'm not aware.

20 Q Are you aware of any court decision that
21 ruled against the challenge to the Massachusetts

1 assault weapon ban?

2 A No.

3 Q Would that be relevant to your evaluation
4 if you knew about it?

5 A I'm not sure if it would or wouldn't. I'd
6 have to see it.

7 Q Can you tell me who asked you to
8 participate in this matter as an expert?

9 A I believe it was either John or Jay Porter.
10 I forget exactly who with this firm contacted with me.

11 Q When you say "John," you mean John Sweeney?

12 A Yes, sir.

13 Q The gentleman sitting next to you, correct?

14 A Yes. That's the guy.

15 Q And Jay Porter is another lawyer for the
16 Bradley firm?

17 A Yes, sir.

18 Q Were you asked to participate in this
19 matter by anyone at the NRA?

20 A No. I asked for my boss's permission to
21 participate in it, and he gave his okay.

1 Q And when you refer to your boss, who do you
2 mean?

3 A Joe DeBergalis.

4 Q And did you understand Mr. Sweeney and
5 Mr. Porter to be working for the NRA?

6 A I understood that there was some
7 affiliation. I'm not sure exactly who their client is.

8 Q Are you aware that the NRA is paying the
9 fees and costs in this case?

10 A That would not surprise me. I didn't know
11 for sure.

12 Q Now, I notice that you're not being paid
13 for your time working on this case; is that right?

14 A No. No special payment for my time on this
15 case.

16 Q Who is paying you for your time today?

17 A I'm salaried at the NRA, so I'm doing this
18 on NRA's time.

19 Q They're not asking you to take a vacation
20 day to do this?

21 A No, they're not.

1 Q Personal day?

2 A No.

3 Q Sick day?

4 A Not that either.

5 Q So you'll get paid by the NRA for your time
6 here today?

7 A Yes, sir.

8 Q And you'll get paid for some of the time
9 you put into preparing the expert report in this
10 matter?

11 A Just as part of my regular salary, yes,
12 sir.

13 Q Is it fair to say that in this matter
14 you're working for the NRA?

15 MR. SWEENEY: Objection.

16 THE WITNESS: To the extent that I'm being
17 paid by the NRA for my time spent on this, yes, I think
18 so.

19 (Exhibit No. 3 was marked for
20 identification.)

21 ///

1 BY MR. KLEIN:

2 Q I've handed you a document that's labeled
3 Exhibit Number 3.

4 Is that a document that's familiar to you?

5 A That looks like it's a copy of my
6 deposition in Tardy versus O'Malley.

7 Q And that's a document you reviewed as part
8 of your preparation for your deposition today?

9 A Yes, sir.

10 Q So you remember having your deposition
11 taken in that case on January 6, 2014?

12 A Generally, yes.

13 Q And you reviewed the testimony you gave in
14 that case before you came here today?

15 A Yes, sir.

16 Q And you understood at the time of the
17 deposition that you were answering questions under
18 oath, correct?

19 A Yes, sir.

20 Q And at that time, all of your answers were
21 truthful to the best of your ability, right?

1 A Yes, sir.

2 Q Is it fair to say that your opinions in
3 your area of expertise are the same now as they were
4 then?

5 A I can't think of any matter in which
6 they've changed.

7 (Exhibit No. 4 was marked for
8 identification.)

9 BY MR. KLEIN:

10 Q I've just handed you a document that's
11 labeled Exhibit Number 4. I'm not sure why these were
12 separately copied, but if you would take a look at
13 them.

14 A Okay.

15 Q It's my understanding, and I'd ask you to
16 confirm my understanding, that these are the exhibits
17 to the deposition that you gave in Tardy versus
18 Maryland.

19 A I don't know that I've seen this before, so
20 I can't confirm that. I'd be willing to believe that
21 if you represent that.

1 Q They would have been appended to the
2 deposition transcript at the time? Do you know?

3 A I'm not sure that I saw these.

4 Q I'd ask you to turn then to Exhibit
5 Number 2, which says "Living With Brady" at the top.

6 A Yes, sir.

7 Q Is that something you wrote?

8 A It is.

9 Q And it appeared in the Blue Book of Gun
10 Values 15th Edition, right?

11 A Yes, it did.

12 Q And, at that time, you were working for a
13 company called Old Town Station; is that right?

14 A Yes, sir.

15 Q Do you remember approximately when this was
16 written?

17 A Oh, wow. You can look at Blue Book -- it
18 puts out one edition each year -- and figure out when
19 the 15th edition was published. I guess this was
20 probably -- oh, third paragraph says, "At this writing,
21 March 1994, the Brady Bill has just become effective."

1 So it would be March 1994 when this was
2 written, and it was probably published a month or two
3 later.

4 Q Do you remember writing this?

5 A I do.

6 Q At the time, did it accurately state your
7 opinions?

8 A Yes, it did.

9 Q If you could turn to Exhibit Number 3 -- to
10 the document you have, which is in this case, Exhibit
11 Number 4. So it's something that says at the top,
12 "This is the Gun Zone."

13 Do you see that?

14 A I do.

15 Q And that was, based on the marking,
16 probably an exhibit to the deposition in Tardy versus
17 O'Malley, do you think?

18 A It appears to be.

19 Q And at the top it says, "Jim Supica, NRA
20 Board Candidate's Un-Redacted Responses."

21 Do you see that?

1 A Yes, sir.

2 Q Do you remember being interviewed for this
3 particular piece?

4 A As I recall, this is a response to an
5 online group, a firearms related group, in response to
6 their request for information from board candidates for
7 the NRA Board.

8 Q If you turn to the next page, close to the
9 bottom of the page, it says, "By Jim Supica, 2004
10 Candidate For Reelection."

11 A Yes, sir.

12 Q Does that mean that this was in connection
13 with your candidacy for reelection to the Board of the
14 NRA?

15 A Yes, sir.

16 Q And do you remember making these statements
17 at the time?

18 A I haven't reviewed this, but I'm pretty
19 sure that is probably a correct copy. And, yes, that
20 would be accurate.

21 Q Go ahead and review it.

1 A Okay, thanks.

2 That looks like what I wrote.

3 Q And that means you actually wrote this down
4 rather than responded to a question orally and had
5 someone else write down what you said, right?

6 A This would have been a question that was
7 probably e-mailed to me or posted on a website, and I
8 responded either by e-mail or by posting on a --
9 probably a forum on the website.

10 Q And, as far as you know, this is an
11 accurate reproduction of what you responded at the
12 time, right?

13 A I believe it probably is.

14 Q At that time, it was your view that the
15 assault weapons ban and large-capacity magazine ban is
16 an egregious tumor on the Bill of Rights, correct?

17 A Yes, sir.

18 Q And you also believe that it's one of the
19 more hysteria-induced and silly-assed federal laws ever
20 passed, right?

21 A In retrospect, there are probably a lot of

1 hysterical federal laws that have been passed, but I
2 think -- yeah, I think that statement can stand.

3 Q It's one of the more hysteria-induced and
4 silly-assed federal laws?

5 A Yes, sir.

6 Q And you also believe that the assault
7 weapons ban is the poster child for demonizing the gun
8 culture, right?

9 A Yes, sir.

10 Q And how would you say that it demonized the
11 gun culture?

12 A It takes a very commonly owned and commonly
13 used type of firearm that is owned and used by millions
14 of Americans for any number of legitimate purposes and
15 puts it in a banned, restricted, outlawed category.

16 Q It's also banning guns that have been used
17 by criminals, correct?

18 A Most types of guns have been used by
19 criminals.

20 Q These guns have been used by criminals in
21 many mass shootings, right?

1 A Again, any number of different types of
2 guns have been used by criminals in any number of
3 crimes including mass shootings. There have been a
4 number of types of guns used in mass shootings, and
5 these guns are among those.

6 Q So do you question the understanding of the
7 proponents of the Clinton Assault Weapons Ban that its
8 purpose was to help protect public safety?

9 MR. SWEENEY: Objection.

10 THE WITNESS: I question as to whether its
11 effect was to protect public safety.

12 BY MR. KLEIN:

13 Q But you believe that the proponents were
14 not intending to protect public safety, but rather to
15 demonize the gun culture, right?

16 A I think the proponents had a number of
17 reasons. Certainly firearms are a very
18 politically-charged issue. There are a number of
19 people on both sides of the issue who feel very
20 strongly, so I can believe that, as with most laws,
21 there were some good intent with this. I can also

1 believe that there was a substantial amount of
2 political intent involved with this.

3 Q What's the good intent in your view?

4 A I can only guess that the proponents of
5 this had a misguided belief that restricting a type of
6 firearm would restrict crimes committed.

7 Q These were elected officials, right?

8 A Yes. I believe they were.

9 Q And if people disagreed with them, they
10 could have been voted out of office, right?

11 A Yes.

12 Q You also state an opinion that this assault
13 weapons ban is part of the divide and conquer
14 incrementalism tactics of the anti-Second Amendment
15 movement; is that right?

16 A Yes.

17 Q Do you still believe that?

18 A Yes. I think there's an aspect of that.

19 Q So if I represent to you that the
20 Massachusetts assault weapons ban is the same as the
21 assault weapons ban at issue in this article, would you

1 say the same things about the Massachusetts assault
2 weapons ban?

3 A Yes. I think generally they would apply.

4 Q I'm going to turn your attention to the
5 next to last paragraph of this statement.

6 A Yes, sir.

7 Q Is that still your opinion?

8 MR. SWEENEY: I'm sorry. What? The entire
9 paragraph?

10 MR. KLEIN: Yes.

11 MR. SWEENEY: All right.

12 Do you understand which paragraph he's
13 referring to?

14 THE WITNESS: Yeah.

15 At this point, we're talking about my
16 personal opinions, not my expert opinions. But, yes, I
17 think that's -- I think I can still agree with that
18 paragraph.

19 BY MR. KLEIN:

20 Q So when you say these are your personal
21 opinions, do they also inform your expert opinions?

1 A I don't know that they do.

2 Q So to the extent that your expert opinions
3 appear to reflect personal opinions, can we ignore
4 them?

5 A My expert opinion is drawing on my
6 expertise in the field. I have personal political,
7 religious, philosophical opinions that shape who I am,
8 but those are not necessarily what I'm reporting on in
9 my expert opinion.

10 Q So it's not quite responsive to the
11 question I asked you, so I'm going to ask it again.

12 A Okay.

13 MR. SWEENEY: Objection.

14 BY MR. KLEIN:

15 Q To the extent your expert report includes
16 what appear to be personal opinions, can we ignore
17 them?

18 MR. SWEENEY: Objection. Asked and
19 answered.

20 THE WITNESS: I'm sorry. One more time,
21 please.

1 BY MR. KLEIN:

2 Q To the extent your expert report appears to
3 include personal opinions, can we ignore them?

4 MR. SWEENEY: Objection. Asked and
5 answered.

6 THE WITNESS: My expert opinion is based on
7 my expertise in the field and not my personal opinions.

8 BY MR. KLEIN:

9 Q So if it does include personal opinions, we
10 can ignore them, correct?

11 MR. SWEENEY: Objection.

12 THE WITNESS: No. I don't think there are
13 personal opinions that are not substantiated by my
14 expertise in the report, so what I said in my expert
15 report is what I meant based on my expertise in the
16 field.

17 MR. SWEENEY: Let's take a quick break.

18 MR. KLEIN: Sure.

19 (A brief recess was taken.)

20 BY MR. KLEIN:

21 Q Sir, do you have Exhibit 3 and 4 in front

1 of you?

2 A Yes, sir.

3 Q And, in both exhibits, there is a cover
4 sheet that says, "In the Matter of Shawn J. Tardy, et
5 al., Versus Martin J. O'Malley, et al."

6 Do you see that?

7 A I do.

8 Q Do you happen to know if that is the same
9 case as Kolbe versus O'Malley?

10 A I have been told that it is.

11 Q Is it fair to say that in that case, you
12 were also working for the NRA?

13 MR. SWEENEY: Objection.

14 THE WITNESS: I was employed by the NRA at
15 the time, and I was not paid separate expert witness
16 fees for my testimony.

17 BY MR. KLEIN:

18 Q And the NRA paid the costs of that case as
19 far as you know?

20 MR. SWEENEY: Objection.

21 THE WITNESS: I don't know one way or the

1 other.

2 BY MR. KLEIN:

3 Q Okay. I'm going to show you a document
4 labeled Exhibit Number 5.

5 (Exhibit No. 5 was marked for
6 identification.)

7 BY MR. KLEIN:

8 Q Would you look through that document,
9 please.

10 A Okay.

11 Okay. I've looked through it quickly.

12 Q Do you recognize the document?

13 A I recognize that it has material that I've
14 written. I'm not sure what the document is.

15 Q Let's turn to the third page of the
16 document.

17 A Okay.

18 Q Is that your signature at the bottom of the
19 page?

20 A Yes, it is.

21 Q And on the fifth page of the document, is

1 that also your signature?

2 A Oh, we're counting front and back? I'm
3 sorry. Yes, those are both my signature.

4 Q And is it possible that this is the
5 material that you filed with the court -- or, I
6 shouldn't say that you filed -- that the lawyers filed
7 with the court in connection with your expert opinion
8 in Kolbe versus O'Malley?

9 MR. SWEENEY: Objection.

10 THE WITNESS: It's not labeled, so I can't
11 be sure, but that's certainly possible.

12 BY MR. KLEIN:

13 Q One way we can look at the question is:
14 Do you see at the top that there's a case caption?

15 A Yes, there is.

16 Q And it says, "1:13-CV-02841-CCV"?

17 A Yes.

18 Q And if you go back and look at Exhibit
19 Number 3 --

20 A Yes, sir.

21 Q -- that same number will appear, I think.

1 A I see it on the second page of that
2 document.

3 Q Does that suggest to you that these are
4 documents from the same case?

5 A Yes. I think it does.

6 Q If you turn back to Exhibit Number 5 --

7 A Yes, sir.

8 Q -- the one you just started looking at.
9 Would you look at Paragraph 7 of your
10 declaration.

11 A Yes, sir.

12 Q It says there:

13 "One of the primary reasons for the
14 abandonment of the M14 as a field weapon was the
15 difficulty of controlling the firearm while engaged in
16 fully-automatic mode."

17 Do you see that?

18 A Yes, sir.

19 Q And is that your opinion?

20 A Yes.

21 Q And is it the case that when the Army

1 abandoned the M14 as a field weapon, they introduced a
2 weapon that did not have fully automatic mode?

3 A I thought the M16 was the successor to the
4 M14, and that is a select fire weapon.

5 Q With burst mode and semi-automatic mode,
6 right?

7 A I don't know if it's burst or full-auto.
8 It maybe burst mode.

9 Q And if you look at the first sentence of
10 Paragraph Number 8, that says:

11 "With respect to interchangeability of
12 parts between enumerated banned firearms and
13 unregulated firearms, this requirement remains
14 confusing. Interchangeability of parts differs greatly
15 from firearm to firearm."

16 Do you see that?

17 A Yes, sir.

18 Q Did I read it correctly?

19 A Yes.

20 Q And then it says:

21 "And while some individual parts may not be

1 interchangeable, parts groupings such as bolt carriers
2 may, in fact, be interchangeable. Again, this will
3 differ on a firearm-to-firearm basis."

4 A Yes, sir.

5 Q Is that still your opinion?

6 A Yes, sir.

7 Q And what you mean there, unless I
8 misunderstand, is that parts can be interchangeable
9 between guns of the same type?

10 A Parts can be interchangeable between guns
11 of different types as well. You've got to define
12 "types" if you want to make that statement.

13 Q So I think specifically you're talking here
14 about bolt carrier as an example, right?

15 A Bolt carrier is an example of a group of
16 parts, yes, sir.

17 Q And the bolt carrier from an AR-15 can be
18 interchangeable with the bolt carrier of another AR-15,
19 correct?

20 A I believe it can in most cases.

21 Q The trigger mechanism for an AR-15 can be

1 interchanged with the trigger mechanism on another
2 AR-15, right?

3 A In most cases.

4 Q And, in general, the extractor mechanism
5 works the same on any AR-15; isn't that right?

6 A Gosh, I think the extractor mechanism
7 serves the same general function in most firearms.

8 Q But it works in the same way on different
9 makes and models of AR-15s, right?

10 A Again, the general function of an extractor
11 is the same for all firearms, I think.

12 Q And you can move a charging handle from an
13 AR-15 onto another AR-15 and still have it work, right?

14 A There are a number of variations of AR-15s.
15 It's a very prolific and popular firearm. My
16 understanding is that not all guns on the AR-15 have
17 fully interchangeable parts, but a significant number
18 of the different models do.

19 Q One of the parts that can be interchanged
20 among that significant number of AR-15 models is the
21 charging handle, right?

1 A I think probably so. Again, maybe not on
2 all models. I really can't answer that with
3 specificity.

4 Q And if you have a magazine that's built for
5 an AR-15 platform gun, it can be used with any AR-15
6 platform gun, right?

7 A I think if you're talking the same caliber,
8 that is generally true.

9 Q Are you familiar with the facts of any
10 incident in which a civilian used an AR-15 platform
11 weapon in self-defense in Massachusetts?

12 A In Massachusetts, I don't know that I'm
13 familiar with any self-defense situations in
14 Massachusetts.

15 Q Are you familiar with the use of an AR-15
16 platform weapon in self-defense anywhere in the
17 country?

18 A I cannot give specific examples, but I have
19 the impression that, yes, they have been used in
20 self-defense.

21 Q When you say you have the impression, but

1 you don't have specific examples, does that mean you
2 can't point me to a specific incident?

3 A I cannot point you to a specific incident.

4 Q Are you aware of any circumstances in which
5 an AK-47 has been used in self-defense in
6 Massachusetts?

7 A An AK-47 is a machine gun. It would very
8 much surprise me if a full-auto AK-47 has been used in
9 personal defense anywhere in the country.

10 Q Are you familiar with a semi-automatic
11 version of the AK?

12 A Yes, sir.

13 Q What would you call that?

14 A I would call that an AK-type firearm.

15 Q Are you familiar with any circumstances in
16 which an AK-type firearm has been used in self-defense
17 in Massachusetts?

18 A Again, I'm not familiar with specific uses
19 of any firearms in Massachusetts for self-defense that
20 I can recall.

21 Q Are you aware of any specific incidents

1 where an AK-platform gun has been used in self-defense
2 anywhere?

3 A I'm not sure if they have or not. It would
4 surprise me if they hadn't.

5 Q But you can't give me any specific
6 incidents?

7 A No, sir, I can't.

8 Q Are you familiar with any circumstances in
9 which a weapon that would be treated as banned under
10 the Massachusetts assault weapons ban has been used in
11 self-defense in Massachusetts?

12 A Once again, I'm not familiar with specific
13 self-defense incidents in Massachusetts, much less what
14 type of firearms were used.

15 Q You mentioned that it's your opinion that
16 restrictions on access to fully-automatic weapons are
17 acceptable.

18 Is that a fair statement of what you said?

19 A That is a personal opinion, yes.

20 Q And I think you mentioned that one of the
21 reasons for that opinion is that they can be fired

1 indiscriminantly; am I right about that?

2 MR. SWEENEY: Objection.

3 THE WITNESS: I believe we discussed that,
4 and the gist of it was that any firearm can be fired
5 indiscriminantly.

6 BY MR. KLEIN:

7 Q So is it fair to say that you believe that
8 fully-automatic weapons are more dangerous than
9 semi-automatic weapons?

10 A No. Not necessarily and intrinsically.

11 Q Is it a true statement that the faster you
12 fire a gun, the harder it is to properly aim?

13 A Many types of guns can be fired very
14 rapidly with proper aim with practice. For most types
15 of firearms, there is some limitation as to how rapidly
16 they can be accurately fired.

17 Q Would you say that that's true for an AR-15
18 type gun?

19 A That would be true for a lot of types of
20 guns. The AR would be one of those types of guns for
21 which it's true.

1 Q And one of the reasons for that is that the
2 recoil of the gun moves it off target and has to be
3 re-aimed, correct?

4 A The recoil of an AR is very minimal
5 compared to many other types of rifles, but that is one
6 of the reasons that it is difficult to rapidly fire a
7 gun accurately. That is one of the limiting factors of
8 how rapidly a firearm can be fired.

9 Q Even mild recoil pulls it off target to
10 some extent, right?

11 A There are types of guns and types of gun
12 setups that really minimize that effect. But, yes, in
13 most cases, recoil for most commonly used center-fire
14 cartridges will pull a gun off target. Now, there are
15 design characteristics that can mitigate that factor to
16 a certain extent.

17 Q But not completely?

18 A That's an absolute, and I can't say not
19 completely. I think there are some types of very
20 specialized target firearms that go to a great deal of
21 extent to allow the shooter to be able to keep the

1 muzzle very steadily on target.

2 Q No matter how fast the trigger is pulled?

3 A I think, in those situations with that type
4 of gun, you're getting more into the skill and ability
5 of the shooter than the limitations of the firearms.

6 Q You would agree that indiscriminate fire is
7 dangerous, correct?

8 A Yes.

9 MR. SWEENEY: Objection.

10 THE WITNESS: Yes, sir, I would.

11 BY MR. KLEIN:

12 Q Non-aimed fire is dangerous?

13 A It certainly can be, yes, sir.

14 Q Among other things, bystanders can be hit,
15 correct?

16 A If we're talking about shooting in a
17 situation where there are bystanders, yes.

18 Q In some cases, a semi-automatic weapon can
19 be fired indiscriminantly by someone pulling the
20 trigger as fast as possible, correct?

21 A Along with other types of weapons. It is a

1 function of the ability and training of the shooter,
2 the firearm, and the circumstances.

3 Q But somebody who is poorly trained or not
4 very interested in hitting an aimed target could fire
5 indiscriminantly with an AR-15, right?

6 MR. SWEENEY: Objection.

7 THE WITNESS: As they could with many other
8 types of firearms.

9 BY MR. KLEIN:

10 Q How fast can the trigger be pulled on an
11 AR-15?

12 A As fast as you can work your finger.

13 Q And how fast is that?

14 A I can't give you a rate.

15 Q Could you empty a 30-round magazine on an
16 AR-15 in five seconds or less?

17 A I don't I think could.

18 Q Could someone who could move their finger
19 quickly do that?

20 A I don't really know. That would surprise
21 me a little bit.

1 Q Is it your view that civilians should have
2 access to any weapon that is available to law
3 enforcement officers in the United States?

4 A My opinion is that federal law has
5 restrictions on some types of firearms and that
6 specifically full-automatic firearms -- but civilians
7 can have access to those in most states under certain
8 circumstances when they comply with that law.

9 So, yes, I think most firearms that are
10 appropriate for police are also appropriate for
11 civilian usage.

12 Q Other than automatic weapons?

13 A Again, I think it's appropriate for
14 civilians to own full-automatic firearms when they have
15 gone through the proper registration and legal
16 requirements.

17 Q Are you familiar that there is also state
18 restrictions on guns?

19 A I don't know that -- yeah, I am familiar
20 that state restrictions exist. I don't know the status
21 of all 50 states' restrictions.

1 Q You're familiar with at least the
2 Massachusetts restrictions that are at issue in this
3 case, right?

4 A On full-automatic firearms?

5 Q No. On semi-automatic firearms.

6 A Yes, sir.

7 Q And is it your view that one of the reasons
8 civilians should have those guns is because they're
9 available to law enforcement?

10 A No, sir.

11 Q What's your understanding of the average
12 range of a handgun, more or less?

13 A The average what, please?

14 Q Range.

15 A Range. The vast majority of handguns can
16 be fired by the majority of somewhat-trained shooters
17 effectively out to 25 yards or 50 yards, and the round
18 is certainly dangerous further than that.

19 We're generally talking the most popular
20 and widely produced type of firearms. There are other
21 handguns that can have a much greater range and a

1 number of fairly popular handguns that are very
2 difficult to shoot accurately at 25 yards.

3 Q So you're using 25 yards as an approximate
4 average range for handguns?

5 A What do you mean by "range"?

6 Q How far they can be effective.

7 A They can be effective much further than
8 that.

9 Q Well, what's your understanding of what the
10 effective range of a gun is?

11 A Well, I'm assuming that we're saying it's a
12 range at which the bullet could do damage if it hits
13 someone or a target.

14 Q Is it fair to say that others would view it
15 as the range at which someone is likely to be able to
16 shoot what they're aiming at?

17 A Well, that would be a specific definition.
18 But, yeah, that's a -- if you put it in those terms,
19 that's a fair way to define "range."

20 Q Is there a different term you'd like to use
21 for that particular evaluation?

1 A Just pick the term, and we'll go with that.

2 Q So let's understand "effective range" to
3 mean the range at which someone is likely to be able to
4 hit the target.

5 A What size target are we talking about?

6 Q Let's talk about a target the size of a
7 human being.

8 A Okay. A human torso?

9 Q Yes.

10 A Okay.

11 Q So what is the effective range of a handgun
12 on average?

13 A For the average shooter --

14 Q Yes.

15 A -- or for a highly-trained shooter?

16 Q For an average shooter?

17 A Average shooter, reasonably ten yards; with
18 practice, 25 yards.

19 Q What about for a shotgun?

20 A Shotgun will go a little further in terms
21 of effective range. Your average shooter -- let me

1 backtrack just a little bit.

2 In general, all other things being equal, a
3 shoulder-fired weapon will be easier to shoot
4 effectively and hit a target with than a handheld
5 weapon like a pistol or revolver.

6 So, generally, a shotgun will be effective
7 for an average shooter with moderate training to a
8 further range. I think most shooters could hit with a
9 shotgun fairly easily at 25 yards with a little bit of
10 training and further than that with a little more
11 practice -- 50 yards or so and even further with
12 significant practice.

13 But a shotgun is going to start running out
14 of energy and start having a drop if you get too far
15 out.

16 Q How about with a rifle?

17 A A rifle will have generally a much more
18 extended effective range than either a handgun or a
19 shotgun.

20 Q Can you give me a sense of what that range
21 is?

1 A It will depend very much on the rifle and
2 the cartridge, especially the cartridge.

3 Q Let's talk about an AR-15 then.

4 A The most common chambering for an AR-15 is
5 going to be a .223 or 5.56 NATO, and most shooters can
6 learn to shoot a center-fire rifle in .223 effectively
7 out to a hundred yards with adequate practice.

8 Skilled shooters would be able to go
9 significantly further than that out to 300 yards. And
10 highly motivated and highly trained shooters may be
11 able to hit further than that.

12 Q Close to 500 yards?

13 A Yes, sir.

14 Q More than a third of a mile?

15 A I don't know the math on that, but I'll
16 believe you.

17 Q Is it fair to say that the more distant the
18 target, the more you would prefer to use a rifle?

19 A Yes, sir.

20 Q Is it fair to say that the more distant the
21 target, the more important it is to use some type of

1 sight with the gun?

2 A It's nearly always important to use some
3 type of sight.

4 Q Is it fair to say that, in the context of
5 guns used in self-defense, most targets are within the
6 range of a handgun?

7 A I think the majority would be, yes, sir.

8 Q Can you tell me what your understanding is
9 of what the Second Amendment protects?

10 A The right to keep and bear arms, I believe
11 literally.

12 Q Anywhere and for any purpose?

13 A You're asking a personal opinion?

14 Q Yes.

15 A My personal opinion is that our society has
16 evolved an understanding of what arms are acceptable
17 for ownership and use and which ones need to have some
18 type of restriction.

19 Q And you are willing to live with that
20 evolution?

21 A I'm generally okay with the -- let's say,

1 the state or federal law on the matter. I think that
2 there are improvements that could be made.

3 Q What about the state of Massachusetts law?

4 A What I know about the state of
5 Massachusetts law is what's been shown to me in this
6 case. I think it's inappropriate to restrict the
7 firearms that are restricted under the Massachusetts
8 law.

9 Q Are you familiar with the gun called the
10 M16?

11 A Yes, sir.

12 Q What is it?

13 A It is a military select-fire firearm, so
14 technically it's a machine gun. It uses the
15 improvements that were developed in the 1960s, and
16 similar improvements are used in the semi-automatic
17 sporting version, the AR-15 platform.

18 Q And that latter gun is the civilian version
19 of an M16, right?

20 A Yeah, I think it can go either way on that.
21 That's the civilian version, or the M16 is the military

1 version of the AR-15. The difference is that one is
2 select fire and the other is semi-automatic. That
3 would be the primary difference.

4 Q And can you tell me the names of some of
5 the manufacturers of the M16?

6 A Gosh, I'm not sure that I can tell you a
7 great number of the ones that have military contracts.
8 I believe probably Colt being the first one who sold to
9 the military still does have a military contract.

10 The very first ones may have been ArmaLite,
11 but Colt was certainly the major manufacturer for the
12 military for quite a while. I'm just sure that other
13 companies have sold to the government too, but I can't
14 enumerate them.

15 Q Is the original name for the M16 the AR-15?

16 A Yeah. While ArmaLite was developing the
17 firearm, it was named the AR-15.

18 Q And then the military changed it to the
19 M16?

20 A That's my understanding that when it was
21 adopted in its select-fire form, it was changed to the

1 M16.

2 Q So when it was then made a semi-automatic
3 weapon for civilian use, either Colt or ArmaLite
4 changed the name back to AR-15?

5 MR. SWEENEY: Objection.

6 THE WITNESS: I believe it was first
7 offered by Colt at about the same time as the military
8 contract for the M16. When it was first offered by
9 Colt, I know they were advertising it as the Sporter.
10 I think they might have picked that AR-15 back up at
11 that time, but at some point, the semi-automatic rifle
12 was known as the AR-15.

13 And when we're talking about AR-15s, I'm
14 talking about a large number of guns that are all the
15 same general pattern as the original Colt AR-15 in
16 terms of function and usually in terms of cosmetic
17 appearance.

18 Q Do you recognize a M16 when you see it?

19 A I'd have to look closely at the selector
20 switch to see if it was an M16 or an AR-15.

21 Q So what you mean is you'd have to look to

1 see if it had a selector switch that allowed it to
2 engage in select fire?

3 A Yes, sir.

4 Q Including automatic fire?

5 A Yes, sir.

6 Q Otherwise, the appearance would be the same
7 to you as an AR-15 for civilian use?

8 A Yes, sir.

9 Q And I believe you mentioned that the most
10 popular forms of ammunition for an AR-15 are .223
11 Remington.

12 Is that one?

13 A That's the most popular chambering for
14 AR-pattern rifles.

15 Q And another chambering would be 5.56 NATO,
16 right?

17 A That's essentially the same round. They're
18 generally interchangeable. I believe there are very
19 minor differences, and I think you can find some
20 authorities that suggest that they not be used
21 interchangeably. But for most practical purposes,

1 they're generally considered interchangeable.

2 Q And people do use them interchangeably?

3 A I believe they do, yes, sir.

4 Q And those two rounds are both available to
5 civilians, correct?

6 A Yes, sir.

7 Q And they're both available to military as
8 well?

9 A Yeah, I think the military designation is
10 the 5.56. I don't think the military designates the
11 .223 Remington. I couldn't swear to that.

12 Q And both the M16 and the AR-15 can also be
13 chambered for 7.62 NATO as well, right?

14 A No, they cannot.

15 Q 7.62 NATO is different sized rounds,
16 correct?

17 A Yes, sir. It's a different cartridge.

18 Q And it's -- a form of 7.62 is used in an
19 AK-type gun, right?

20 A No, sir. When you say, "7.62 NATO," that's
21 a very different high-powered rifle cartridge. That's

1 what the M14 was chambered for. It's about twice as
2 powerful as the .223 or 5.56.

3 I think the confusion is that there are two
4 types of very common 7.62 rounds. The 7.62 NATO is the
5 same as .308 Winchester. The 7.62 by 39 is the
6 original cartridge that was used in the AK.

7 Q It's a similar power level to the 7.62
8 NATO?

9 A No. Much less powerful. Much closer to
10 the .223.

11 Q The 7.62 NATO round, is that available both
12 to civilians and to the military?

13 A I believe it's probably called the 3.08
14 Winchester for civilians; but, again, they're
15 essentially identical rounds. Again, there may be some
16 very minor differences in them.

17 Q And are you familiar with what is typically
18 called a .22 round?

19 A That would usually be .22 Long Rifle
20 Rimfire. Yes, sir.

21 Q And is that a less powerful round?

1 A Yes. That's significantly less powerful
2 than any of the three that we've discussed.

3 Q The M16 that we've been discussing was
4 designed for the Army, correct?

5 A The M16 came out of ArmaLite's program to
6 develop a modern rifle. I suspect their primary market
7 was the military. I suspect they targeted the best
8 sales there.

9 As far as I can tell, the M16 and the
10 semi-automatic version were developed pretty much
11 contemporaneously, but I would think that ArmaLite
12 would be looking primarily for the military contracts
13 of the select-fire machine gun version, the M16.

14 Q And when you say the "semi-automatic
15 version," you mean what's now called the AR-15, right?

16 A That's what we've been calling the AR-15,
17 yes, sir.

18 Q And they were built on the same design but
19 for the addition of a select-fire option for the
20 military, right?

21 A Yes.

1 Q They both have two receivers -- an upper
2 and lower?

3 A Yes, sir.

4 Q If you examine those receivers, the
5 openings in the receiver would be configured the same
6 for the military and the civilian version, right?

7 A We're talking about like the injection port
8 and the magazine well?

9 Q Places where different parts fit in to
10 build it out into a gun?

11 A I can't say that for certain. I know there
12 are significant differences in the internal design of
13 an AR-15 and an M16, so there is not full parts
14 interchangeability between the two.

15 Q But the interchangeability that we're
16 talking about is limited to the issue of whether it can
17 fire automatically or not, correct?

18 A Yes, sir. That would be the primary
19 difference between the two.

20 Q And you don't know whether the receivers
21 would look the same for both guns as designed?

1 A The receivers for both guns are going to
2 look very similar. Again, the primary difference is
3 the select-fire switch for the full-auto M16.

4 Q And the trigger is going to be the same for
5 both weapons, right?

6 A Trigger will generally be very similar.
7 The AR-15 gets modified and customized extensively, so
8 there are a number of different triggers that can be
9 used on the AR-15. Generally, the general
10 configuration between the M16 and most AR-15s in terms
11 of the trigger itself will be essentially identical.

12 Once you get into the operating parts
13 inside the receiver, they're going to be different
14 between the AR-15 and the M16 for several of the parts.

15 Q Which parts?

16 A I can't tell you specifically. I'm not
17 much of a gunsmith.

18 Q So what's the basis of your knowledge for
19 the statement you just made?

20 A I have gone through the disassembly of an
21 AR-15 with other curators who are familiar with the

1 parts, and they pointed out the different parts that
2 would be different in an M16. I understand there are
3 several different parts; but, as to their names, I
4 can't tell you what the names are.

5 Q Typically those would be the parts that
6 would be necessary for the gun to fire automatically,
7 right?

8 A Yes, sir.

9 Q Do you know anything about the Army's
10 training program for the M16?

11 A I don't know a great deal about that, no,
12 sir.

13 Q Have you ever reviewed any of the Army's
14 training manuals?

15 A Pardon?

16 Q Have you ever reviewed any of the Army's
17 training manuals for the M16?

18 A Not in any detail, no.

19 Q Have you reviewed them at all?

20 A I've seen them and flipped through them,
21 but certainly haven't read them in detail and don't

1 recall them.

2 Q Do you have any reason to quarrel with the
3 way the Army trains its soldiers to use the M16?

4 A I don't know how they train their soldiers.
5 I assume the Army generally knows what it's doing.

6 Q Do you know the muzzle velocity of a
7 projectile fired from the M16?

8 A It's pushing 3,000 feet per second, isn't
9 it?

10 Q Do you know the range, the effective range,
11 of an M16?

12 A And, again, let's define what we mean by
13 "effective range."

14 Q The same as we've been talking about.

15 A We've been talking about the ability to hit
16 an intended target the size of a human torso?

17 Q Yes.

18 A I think that's generally considered to be
19 around 300 yards for aimed fire. I think that is
20 generally the military goal, although, the round will
21 be effective beyond that range. And, again, a very

1 skilled shooter can hit beyond that range.

2 Q Do you know what the rate of fire of an M16
3 is in automatic mode?

4 A No, I don't.

5 Q Do you know how fast an M16 can be fired in
6 burst mode?

7 A No, I don't.

8 Q Do you know how fast it can be fired in
9 semi-automatic mode?

10 A Once again, about as fast as the shooter
11 can pull the trigger. There's some mechanical
12 limitations on that, but I think for all practical
13 purposes, it's a limitation on how fast the shooter can
14 pull the trigger.

15 Q And that's true equally of the M16 and the
16 AR-15, right?

17 A Would you please ask that again.

18 Q The ability to fire the gun
19 semi-automatically is just as fast for the AR-15 as it
20 is for the M16, right?

21 A In the semi-automatic mode, yes.

1 Q And that's as fast as you can pull the
2 trigger with your finger, correct?

3 A Yes, sir.

4 Q And then the muzzle velocity of an
5 individual projectile fired from an M16 and an AR-15
6 would be the same, right?

7 A Yes. They are essentially the same round.

8 Q Is it fair to say that the M16 was designed
9 to be efficient in battle?

10 A Yes, it was.

11 (Exhibit No. 6 was marked for
12 identification.)

13 BY MR. KLEIN:

14 Q So I've shown you a document that's
15 labeled Exhibit Number 6.

16 Do you know what this is?

17 A No. I haven't seen this before that I
18 recall.

19 Q If you would just turn to the third page of
20 the document.

21 A Yes, sir.

1 Q It says, "Characteristics of M16/M4 Series
2 of Weapons."

3 Do you see that?

4 A I may not be on the same Page 3. The table
5 there?

6 Q The table.

7 Is that not Page 3?

8 A It's in there. I've got it.

9 It's Chapter 2, "Weapons Characteristics,
10 Accessories, and Ammunition"?

11 Q Yes. And then below that, there's a chart,
12 right?

13 A Yes, sir.

14 Q And up above the chart it says,
15 "Characteristics of M16/M4 Series of Weapons."

16 Do you see that?

17 A Yes, I do.

18 Q Do you have any reason to think that the
19 Army would get any of the characteristics of these
20 weapons wrong?

21 A I would bet the Army knows these pretty

1 well.

2 Q So there are four weapons listed across the
3 top row of the chart.

4 Do you see that?

5 A I do.

6 Q Those are four different weapons, right?

7 A I believe they are four different
8 configurations of the firearm that is very similar in
9 terms of function and construction.

10 Q And those four weapons are an M4 or the M4
11 series in the first column; is that right?

12 A Yes, sir.

13 Q And then the M16A2 and A3, that's the
14 second column?

15 A Yes, sir.

16 Q And then the M16A4 in the third column?

17 A Yes.

18 Q And then the M16A1 in the last column?

19 A Yes.

20 Q And is it fair to say that the numbers on
21 the M16, A1, A2, A3, and A4 were introduced

1 sequentially?

2 The A1 preceded the A2 and A3, and then the
3 A4 followed that?

4 A I believe that's true. I can't say with
5 certainty.

6 Q So if you look at that third column for
7 M16A4 and you go down to the row for automatic maximum
8 effective rate of fire --

9 A Okay.

10 Q -- do you see where it says, "N/A"?

11 A N/A, yes, sir.

12 Q Does that refresh your recollection that
13 the M16A4 does not have an automatic capability?

14 MR. SWEENEY: Objection.

15 THE WITNESS: I'm not familiar with what
16 the M16A4 is.

17 BY MR. KLEIN:

18 Q Do you understand it to be a version of the
19 M16?

20 A It would appear to be from this chart, yes,
21 sir.

1 Q So I'd like to look in more detail at the
2 rows under "Maximum Effective Rate of Fire Rounds Per
3 Minute."

4 Do you see that?

5 A Yes, sir.

6 Q And there's four rows underneath that
7 heading?

8 A Yes.

9 Q One is for semi-automatic, one for
10 three-round burst, one for automatic, and one for
11 sustained.

12 Do you see that?

13 A I see that.

14 Q What's your understanding of what the term
15 "sustained" means in that context?

16 MR. SWEENEY: Objection.

17 THE WITNESS: I don't know what they mean
18 by "sustained."

19 BY MR. KLEIN:

20 Q Do you have any reason to quarrel with the
21 rounds per minute figures in the chart for the

1 different types of fire?

2 MR. SWEENEY: Objection.

3 THE WITNESS: Once again, I would trust the
4 Army to know this information.

5 BY MR. KLEIN:

6 Q So what it says there is that an effective
7 rate of fire for semi-automatic fire is about 45 rounds
8 per minute; is that right?

9 A Yes, sir, for most variations.

10 Q That's the way you understand it, right?

11 A Right.

12 Q And that sounds about right to you?

13 A Yeah. I'm sure, in coming up with that
14 number, they looked at what the average trained soldier
15 can do with a rifle. That would be my guess of what
16 that figure means, but I'm not sure what that means.

17 Q But you agree that the effective rate of
18 fire and the maximum rate of fire are two different
19 things, right?

20 A I'm not sure how the Army defines
21 "effective rate of fire." I would assume those are two

1 different things.

2 Q And you could pull the trigger faster than
3 45 times in a minute, correct?

4 A I would think most people could, yes, sir.

5 Q And then under "automatic," it says, "150
6 to 200" in the columns there it appears; is that right?

7 A Yes, sir.

8 Q And would you assume that that means that
9 the maximum effective rate of automatic fire is 150 to
10 200 shots per minute?

11 A I would assume it is. I'm not sure how the
12 Army factors in things like magazine changes. I don't
13 know if that is for one magazine and then they
14 extrapolate to a full minute, or I don't know if they
15 figure magazine changes in there.

16 I would expect that is for one magazine and
17 extrapolated, but I don't know what their definition of
18 their terminology is from this document.

19 Q But you would agree that if they did have
20 to change magazines, it would slow the effective rate
21 of fire, correct?

1 A Again, I don't know what these figures are.

2 Q Would you say it's -- your general
3 assumption behind the last answer you gave is that if
4 there was a magazine change, it would slow the
5 effective rate of fire is because it takes time to
6 change a magazine, right?

7 A We're no longer discussing this chart?

8 Q Yes, sir.

9 A That is a general question?

10 Q Yes.

11 A Yes, sir, that would.

12 Q Let's go to the rows below the range
13 heading.

14 A Okay.

15 Q Under "Maximum Range," in the first three
16 columns, it's 3600.

17 Do you understand that to mean meters?

18 A I don't know what they're meaning. Meters
19 would not surprise me.

20 Q Well, if you look at the range row, it says
21 "M" in parentheses, doesn't it?

1 A Oh, yes.

2 Q Doesn't that suggest that the figures are
3 in meters?

4 A Yeah, I would think that probably does.

5 Q And that means that the maximum range from
6 the Army's perspective of these M16 weapons is about
7 3600 feet, right?

8 A Meters.

9 Q I'm sorry, meters.

10 A Yes, sir. Now, again, we're talking
11 definition of range, which we've discussed before. I
12 would expect that this is the maximum distance that a
13 bullet will travel fired by one of these rifles held at
14 an optimum angle to take advantage of the arc of the
15 bullet's trajectory. That would be my guess on what
16 that figure means.

17 Q 3600 meters is almost 4,000 feet, right?

18 A It would be more than that, wouldn't it?

19 Q 4,000 yards, I'm sorry.

20 A Yes, sir. Again, you're welcome to do the
21 math, but that sounds reasonable.

1 Q And that's over two miles; is that right?

2 A We can sit and do the math if you like, but
3 that seems reasonable.

4 Q And below that it says, "Maximum Effective
5 Range."

6 Is that what you expect the Army to be
7 doing to calculate how far a shooter can be effective
8 with a gun?

9 A I would bet that's what they mean.

10 Q And so "point target" and "area target," do
11 you understand what that means?

12 A My guess is that by "point target," they
13 are probably meaning aiming at an individual target.
14 And "area target" is probably more -- and I'm not sure
15 what that military term is, but more suppressive fire
16 or firing at a general area rather than selecting an
17 individual target.

18 Q And the point target range given there is
19 somewhere between 460 and 550 meters; is that right?

20 A Yes.

21 Q And it looks like the Army is improved the

1 effective range from the M16A1 to the M16A4?

2 A Yes, sir.

3 Q By about 90 meters, right?

4 A Yes.

5 Q And the effective range for an area target
6 is either 600 or 800, depending on the gun?

7 A Yes.

8 Q And you wouldn't quarrel with me if I said
9 that that's a range that exceeds a third of a mile in
10 both cases?

11 A I'll believe your math.

12 Q Thank you.

13 Do you happen to know how far the shooter
14 in Las Vegas was from the target --

15 A I don't know.

16 Q -- the people he was aiming at?

17 A I don't know.

18 Q Do you know whether he would be in that --
19 strike that.

20 In that context, was his target an area
21 target or a point target?

1 A I don't know that for sure. I think there
2 are a lot of facts that still aren't known about it,
3 and I haven't studied the incident in depth.

4 Q He was shooting at a crowd, right?

5 A That's my understanding, yes.

6 Q And he was shooting at a crowd from pretty
7 far away, right?

8 A Again, that's my understanding, but I
9 really don't know for sure.

10 Q He was on something like the 30th floor of
11 a hotel, right?

12 A Yeah, he was.

13 Q And he was at some distance from the
14 target, right?

15 A Yes, he was.

16 Q And do you know how many people he killed
17 in that context of that incident?

18 A A lot. I don't remember the number.

19 Q 59 sound right?

20 A That sounds right.

21 Q About 500 people were injured; is that

1 right?

2 A That also sounds right.

3 Q He was using an AR-15, is that right, for
4 much of the shooting?

5 A I don't know what specific firearms he was
6 using. I have heard AR-15 type guns mentioned. I
7 don't know that with certainty.

8 Q Do you have any reason or any basis to
9 disbelieve the news reports that say that he was using
10 at least several AR-15 type guns?

11 A No, I don't.

12 Q Do you have any opinions on whether he
13 would have been able to shoot as many people using
14 handguns from that distance?

15 A My opinion is he would not have hit as many
16 people using handguns from that distance.

17 Q If a particular manufacturer were making
18 both AR-15s for civilian use and M16 guns for the Army,
19 would you expect them to use the same materials for
20 both guns?

21 A To the extent that they're interchangeable,

1 yes, I would.

2 Q And, well, you've explained that they are
3 interchangeable but for the difference --

4 A Except for the fully-automatic fire
5 components, I would expect them to use interchangeable
6 parts.

7 Q And interchangeable materials, right?

8 A Yes, sir.

9 Q And you would expect them to be set up to
10 chamber the same size ammo as manufactured, correct?

11 MR. SWEENEY: Objection.

12 THE WITNESS: They generally are. Again,
13 the most popular chambering for the AR-15 is the .223
14 Remington, which is just about identical to the
15 military's 5.56-millimeter round.

16 BY MR. KLEIN:

17 Q And 5.56-millimeter rounds are available to
18 the public, right?

19 A I don't -- yeah. Yes, they are. I'm not
20 sure if most ammunition manufacturers package them with
21 that name on them. Probably the more common packaging

1 is .223. But the rounds, again, are essentially
2 interchangeable and I believe available to the public.

3 Q And you would expect that if a manufacturer
4 was making both an AR-15 gun for civilian use and an
5 M16 for Army use that they would be set up to take
6 advantage of the same sized magazines?

7 A I would think that most manufacturers who
8 are making firearms for the civilian and the military
9 market would use the same materials and parts where
10 they could for both. So, yes, I would expect they
11 would use the same magazines in most cases.

12 Q They became more accepting of the same
13 magazines?

14 A Yes, for the vast majority of ARs. Again,
15 we have to specify that there are some indifferent
16 chambering that require special magazines.

17 Q Is it safe to say that those would include
18 large-capacity magazines?

19 A What do you mean by "large-capacity
20 magazines"?

21 Q I was going to use the Massachusetts

1 definition, more than ten rounds.

2 A Okay. The standard magazine for an M16 or
3 an AR-15, I believe, is 20 or 30 rounds. But I would
4 think that in most cases the manufacturer would
5 manufacture the magazines or purchase the magazines
6 from a supplier that could be fairly interchangeable in
7 both the military full-auto version and the civilian
8 semi-auto version.

9 Q So they would be capable of accepting the
10 same sized magazine even if they were larger than the
11 standard?

12 A My -- once again, I think the standard
13 magazine is 20 to 30 rounds. And in most cases, except
14 where manufacturers are making a special version to try
15 to be compliant with restrictions in certain states,
16 the magazine should be interchangeable.

17 Q If a gun is configured to accept the
18 standard magazine, would it also accept a magazine of
19 ten rounds and less?

20 A Assuming that the magazine was the same
21 basic design, I think it would.

1 Q And certainly, the manufacturer could
2 design magazines of ten rounds or less for an AR-15,
3 right?

4 A I am pretty sure they have.

5 Q And they do, right? They do design
6 magazines of less than ten rounds to fit AR-15s?

7 A Again, I'm pretty sure they have.

8 Q And is it safe to say that if a
9 manufacturer manufactures both an AR-15 for civilian
10 use and an M16 for Army use, that those guns would
11 achieve approximately the same muzzle velocity?

12 A In general, yes. Muzzle velocity is very
13 dependent on the specific cartridge that is used and
14 the barrel length. So if they're making a relatively
15 short barreled in forth for the military, it's going
16 to have a lower muzzle velocity than a long barreled
17 target rifle for the civilian market. And you can see
18 that to a certain extent on the figures that are on
19 this table that we're looking at.

20 Q Let's assume that the barrel length of the
21 two guns we're talking about is the same, the muzzle

1 velocity -- strike that.

2 Let's assume that the barrel length and the
3 round being used is the same, both guns would achieve
4 the same muzzle velocity, right?

5 A They should, yes.

6 Q And that's true whether or not the M16 is
7 fired in automatic or semi-automatic mode?

8 A I believe that's true.

9 (A brief recess was taken.)

10 BY MR. KLEIN:

11 Q Back on the record. I'm going to show you
12 an exhibit labeled Exhibit Number 7.

13 (Exhibit No. 7 was marked for
14 identification.)

15 BY MR. KLEIN:

16 Q I'd ask you to compare the cover page on
17 this one to the cover page on Exhibit Number 6.

18 A Those appear to be the same.

19 Q I'll represent to you that it's just a
20 different section of the same Army manual.

21 A Thank you.

1 Q And I'd ask you to turn to -- and it's true
2 that you're no more familiar with this Exhibit Number 7
3 than you were with Exhibit Number 6, right?

4 A That's correct. I don't believe I've seen
5 this before.

6 Q It's not my intention to trick you, but I
7 do want to look at some sections of this manual. If
8 you would, turn to page 7-9.

9 A Yes, sir.

10 Q Strike that.

11 Can we go to 7-8, the prior page?

12 A Okay.

13 Q Do you see where it says, "Rapid
14 semi-automatic fire"?

15 A Yes, sir.

16 Q It says:

17 "The most important firing technique during
18 fast moving modern combat is rapid semi-automatic fire.
19 It is the most accurate technique of placing a large
20 volume of fire on poorly defined targets or target
21 areas such as short exposure, multiple or moving

1 targets. To apply rapid semi-automatic fire, the
2 soldier intentionally fires a quick series of shots
3 into the target area to ensure a high probability of a
4 hit."

5 Do you see that?

6 A Yes, sir.

7 Q Do you have any reason to disagree that
8 this is the Army's opinion?

9 MR. SWEENEY: Objection.

10 THE WITNESS: No.

11 BY MR. KLEIN:

12 Q Would you believe that the reason that they
13 recommend rapid semi-automatic fire rather than
14 automatic fire is that the shooter is more likely to be
15 accurate with their fire?

16 MR. SWEENEY: Objection.

17 THE WITNESS: I am purely speculating. I
18 would also speculate that there is a conservation of
19 ammunition factor here, which is important to the
20 military because a soldier can only carry so much
21 ammunition. I think both of those would be factors.

1 BY MR. KLEIN:

2 Q In here where it says, "The most accurate
3 technique of placing a large volume of fire," that
4 means that the Army considers it more accurate to use
5 rapid semi-automatic fire than automatic fire, right?

6 MR. SWEENEY: Objection.

7 THE WITNESS: That's what they've written
8 here. That must be their opinion.

9 BY MR. KLEIN:

10 Q Let's turn to the next page. If you would
11 look at the statement following the note near the top
12 of the page.

13 A So paragraph 7-14?

14 Q Yes, that's the paragraph number.

15 A Okay.

16 Q I'm going to read it, and you can tell me
17 whether I've read it accurately. It says:

18 "While soldiers sacrifice some degree of
19 accuracy to deliver a greater volume of fire, it is
20 surprising how devastatingly accurate rapid
21 semi-automatic fire can be. It ranges beyond

1 25 meters. Rapid semi-automatic fire is superior to
2 automatic fire in all measures. Shots per target,
3 trigger pulls per hit, and time to hit. Proper
4 training and repeated practice increases the degree of
5 accuracy."

6 Do you have any reason to believe that's
7 not the Army's opinion?

8 MR. SWEENEY: Objection.

9 THE WITNESS: It's printed here. I'm sure
10 it is.

11 BY MR. KLEIN:

12 Q And that's, again, a statement suggesting
13 that they believe soldiers can be more effective with
14 semi-automatic -- rapid semi-automatic fire than with
15 automatic fire, right?

16 MR. SWEENEY: Objection.

17 THE WITNESS: I think it's situational,
18 isn't it?

19 BY MR. KLEIN:

20 Q It's situational because it says, "Ranges
21 beyond 25 meters"?

1 A Yes, sir.

2 Q And isn't it the case that you can achieve
3 rapid semi-automatic fire with a civilian AR-15?

4 MR. SWEENEY: Objection.

5 THE WITNESS: You can receive -- you can
6 create rapid fire with any number of semi-auto and
7 other types of firearms.

8 BY MR. KLEIN:

9 Q But my question really has to do with the
10 distinction between an AR-15 and the M16.

11 They both fire the same in semi-automatic
12 mode, right?

13 A Yes, they do.

14 Q And there is no difference between the
15 ability to generate rapid semi-automatic fire with an
16 AR-15 than there would be with an M16?

17 A That is true. And again, that is also true
18 of a number of other semi-automatic firearms and other
19 types of firearms that are not semi-automatic.

20 Q Many of the other types of firearms that
21 you're mentioning don't have the features that make the

1 AR-15 and the M16 so effective, right? The features
2 you talk about in your expert report.

3 MR. SWEENEY: Objection.

4 THE WITNESS: We'd have to go into the
5 features and talk about them.

6 BY MR. KLEIN:

7 Q We'll do that and come back to it.

8 Would you turn to page 7-13.

9 A Okay.

10 Q Would you look at paragraph 7-38?

11 A Yes, sir.

12 Q There is a sentence there, "Automatic
13 reversed fire is inherently less accurate than
14 semi-automatic fire."

15 Do see that?

16 A I do.

17 Q Do you agree with that?

18 A That makes sense to me.

19 Q Is it the case that the maximum effective
20 rate of an M16 used in semi-automatic mode would be the
21 same as the maximum effective rate of an AR-15 designed

1 for civilian use?

2 MR. SWEENEY: Objection.

3 THE WITNESS: As rate of semi-automatic
4 fire would be the same with an M16, an AR-15, and
5 nearly all other semi-automatic firearms.

6 BY MR. KLEIN:

7 Q The maximum effective rate of fire is the
8 same for all semi-automatic firearms?

9 A I believe it would be pretty close, yes,
10 sir.

11 Q That would be true regardless of any other
12 features of the gun?

13 A We would have to go into specifics.

14 Q So I notice that you didn't answer the
15 question. I was only asking about the AR-15 and the
16 M16.

17 A I'm sorry. Let's do it again.

18 Q Isn't it the case that the maximum
19 effective rate of an M16 used in semi-automatic mode
20 would be the same as an AR-15?

21 MR. SWEENEY: Objection.

1 THE WITNESS: Yes, sir.

2 BY MR. KLEIN:

3 Q So we've talked at some points throughout
4 the day about differences between AK-47s and an
5 AK-platform gun.

6 Can you describe the difference to me.

7 A An AK-47 is a military issued select fire
8 firearm. An AK-47 platform, when you're talking about
9 the civilian sporting arms market, is a semi-automatic
10 only firearm.

11 Q Do you know the manufacturers of any AK-47
12 platform guns?

13 Do you know the names of the manufacturers
14 of any of the AK-47 platform guns?

15 A I prefer to call them AK-platform. AK-47
16 is a specific model. I believe there are a number of
17 manufacturers of AK-type semi-automatic rifles. Right
18 to mind come a couple of Chinese manufacturers, Norinco
19 and Poly Tech. I think they've been fairly prolific in
20 producing semi-auto AK-patterns.

21 Q Is it fair to say that the difference

1 between the AK-47 guns and the AK-platform guns are
2 basically the distinction between select fire and
3 semi-automatic fire?

4 A In most cases, yes.

5 Q And can you tell me when the AK-47 was
6 first designed?

7 A I think it was around 1947. It was early
8 post-World War II designed for the Russian military.

9 Q And there was a contest that the military
10 sponsored, right?

11 A Yes, sir. Usually in the adoption of
12 military firearms, there is a competition between
13 various design, and I believe there was in the case as
14 well.

15 Q And the AK-47 was chosen in that contest as
16 best suiting military needs?

17 A Yes, sir.

18 Q And do you know if the company that made
19 AK-47s itself produced AK-platform guns without the
20 select fire option?

21 A I think there were two or three Russian

1 arsenals. This would have been during the Soviet era.
2 So these weren't companies that were making them, they
3 were divisions of the state. And I'm not aware that
4 they made any semi-automatic versions.

5 Q Other manufacturers started to make
6 semi-automatic versions?

7 A I think that's probably the sequence of
8 events.

9 Q And they started also making military
10 versions to sell to various militaries around the
11 world?

12 MR. SWEENEY: Objection.

13 THE WITNESS: I don't know that that's
14 true. I'm guessing the Chinese manufacturers may have
15 manufactured for the Chinese military. In fact, those
16 companies may have grown out of state firearms
17 manufacturing concerns, but I don't know for certain.

18 BY MR. KLEIN:

19 Q And the AK-47 was used by the North
20 Vietnamese in the Vietnam War?

21 A Among many other countries, yes, sir.

1 Q And the M16 was used by the United States
2 Army in the Vietnam War?

3 A It was a primary issue long arm.

4 Q And it's still true that many militaries
5 across the world use AK-47s?

6 A Yes, sir.

7 Q Or guns designed to be the same as an
8 AK-47?

9 A Thank you. Yeah, the AK-47 itself was
10 actually discontinued. But subsequent military models
11 capable of full-automatic fire are used widely around
12 the world.

13 Q Would you recognize an AK-47 if you saw
14 one?

15 A Usually, I will. There are some sporting
16 models that have been redesigned to such an extent that
17 it's hard to recognize at first glance by the profile.
18 The AK-pattern arm generally has a very distinctive
19 profile, but they've been made with traditional
20 sporting stocks and in other configurations where you'd
21 have to look a little bit closer at the gun to see that

1 it was an AK-pattern.

2 Q Would an AK-pattern look the same as an
3 AK-47?

4 A In most cases, but not always. Again,
5 there is some that have been designed with different
6 stocks and different features and have a very different
7 appearance.

8 Q What would you do to tell whether it was an
9 AK or an AK-47?

10 A I would take a close look at the receiver
11 and barrel configuration.

12 Q Would you look at whether there was a
13 switch on it for select fire?

14 A I'm sorry. I may have mis-answered that
15 question. Would you repeat the first question before
16 that?

17 Q What would you do to tell if a particular
18 gun was an AK-platform gun or an AK-47?

19 A Yeah, I did mis-hear that. Yes, that's
20 exactly what you would look for, if there is a
21 full-automatic function. And you'd look at the

1 operator controls to see if it had the full-automatic
2 position.

3 Q And the operator controls would essentially
4 be a switch somewhere on the gun --

5 A A selector switch, yes, sir.

6 Q Do you know if both the AK-47 and
7 AK-platform guns are designed to take the same
8 ammunition?

9 A In most cases, they are. And to a greater
10 extent than the AR-15 and M16 are. Vast majority of
11 AK-platform guns do take the 7.62 by 39 Russian
12 ammunition.

13 Q So your distinction there from the AR-15,
14 is that based on the possibility that the AR could be
15 chambered either for 5.56 or .223 Remington?

16 A No, sir. The AR-platform rifles are made
17 for, I want to say, maybe 50 different calibers.
18 They're very easy to change from one caliber to the
19 other by swapping upper receivers. And different
20 calibers will fit different shooters' needs.

21 The AK is a more difficult rifle to -- let

1 me rephrase that. The AK is usually manufactured for a
2 single caliber, and that's what the gun stays as. I
3 believe there are other guns that look like AKs that
4 are generally of the AK type that are chambered for
5 other rounds. But that's not as common as it is with
6 the AR.

7 Q What is the caliber of a rifle that an AK
8 gun typically takes?

9 A Again, it's 7.62 by 39, originally
10 developed as the Russian military round.

11 Q Is it fair to say that the muzzle velocity
12 of an individual projectile fired from an AK-platform
13 gun would be the same as it would be for an AK-47?

14 A Caliber and barrel length being the same,
15 it should be the same.

16 Q Okay. And do you know how fast it would be
17 possible to fire an AK-platform gun?

18 A Semi-automatic mode?

19 Q Isn't that the only AK -- isn't that the
20 definition of an AK-platform gun as you've been using
21 it?

1 A Well, the AK-47 is also built on an
2 AK-platform.

3 Q Let's talk about semi-automatic fire for
4 either AK-47s or AK-platform guns that are limited to
5 semi-automatic --

6 A Yeah. I would think the rate of fire for
7 an AK-platform semi-automatic would be the same as an
8 AR-15, or for about any other type of semi-automatic
9 firearm.

10 Q And you would agree that the number that
11 the Army uses is probably accurate, at least for
12 soldiers, right?

13 A In the context that we've previously
14 discussed, yes.

15 Q And how fast can an AK-47 select fire
16 weapon be fired in automatic mode?

17 A We went over that on the Army's numbers.
18 Do you want to look back at them and see what the Army
19 says?

20 Q Again, that would be the same --

21 A I think it would be pretty similar.

1 Q And the AK-47 was designed for the Army as
2 a gun for use by soldiers, right?

3 A Yes, it was.

4 Q And it was designed to be efficient in
5 battle, right?

6 A Yeah. Many, many firearms have their
7 origins to military development, as well as civilian
8 development.

9 Q Is there any difference in the size of
10 magazines that an AK-47 select fire weapon can
11 accommodate from that -- that an AK-platform gun
12 designed for civilian use?

13 A I think those magazines -- again, all other
14 things being equal, are pretty much interchangeable.

15 Q Are you familiar with a gun called an Uzi?

16 A Yes, sir.

17 Q That was designed for the Israeli army; is
18 that right?

19 A Yes, sir.

20 Q Are you familiar with the gun called a
21 Galil?

1 A Yes, sir.

2 Q Also first designed for the Israeli
3 military?

4 A Yes, sir.

5 Q Are you familiar with a Beretta AR70?

6 A Generally, yes.

7 Q So it was first designed for the Italian
8 army?

9 A I believe so. I'm not sure.

10 Q Fabrique Nationale FN FAL, is that another
11 gun that you're familiar with?

12 A Yes, sir.

13 Q Is that a gun that was first designed for
14 the French military?

15 A That's possible. It's based on a gun that
16 was widely used in the early Cold War era.

17 Q For military purposes?

18 A Yes. I believe it was designed primarily
19 originally as a military gun.

20 Q SWD M10, M11, and M12, those were designed
21 by a company called the Military Armament Corporation;

1 is that right?

2 A Yeah. My impression is that those are
3 mostly versions of what's called a MAC-10 type of gun.

4 Q And those were first designed for the
5 American military, correct?

6 A I'm not sure if they were or not.

7 Q But they were designed for some military
8 use?

9 A I'm not sure what the original design
10 intent of them -- I believe they were originally
11 designed -- the original platform was designed as
12 select fire, if that helps.

13 Q And the Steyr AUG, do you know --

14 A I'm familiar with that, yes, sir.

15 Q That was designed in Austria for the
16 Austrian military?

17 A I don't know the design history of that.

18 Q The Intratec TEC-9, are you familiar with
19 that?

20 A I am generally familiar with that.

21 Q Is that a design based on a Swedish

1 submachine pistol?

2 A It might be.

3 Q Designed by a company called Interdynamic,
4 does that round right?

5 A I can't say with certainty. I'd be willing
6 to believe that.

7 Q Do you understand whether it was designed
8 first for the Swedish military?

9 A The gun that you suggested, it was based on
10 -- sounds like it was designed for the Swedish
11 military. I'm not sure how this -- what market this
12 specific gun was designed for.

13 Q Are you familiar with a gun called the
14 Street Sweeper?

15 A Generally, yes.

16 Q What kind of gun is that?

17 A I believe that's a shotgun with a revolving
18 cylinder.

19 Q Do you know why it was designed, or how it
20 was designed?

21 A I think it was -- I would have to speculate

1 on that. My guess would be probably for the police and
2 civilian market.

3 Q Not for the military?

4 A It's not my impression that that was a
5 military design originally.

6 Q What about the Striker 12?

7 A Very similar situation. It's a revolving
8 cylinder shotgun, I believe. And again, if I'd have to
9 guess -- I don't know for certain, I'd guess that it
10 was designed for the police and civilian market.

11 Q So let's go back to the Street Sweeper. Do
12 you have any sense of why it was named the Street
13 Sweeper?

14 A Yes. It would be used as a defense or
15 police firearm. It would be effective as close range,
16 engaging multiple assailants in a fairly wide area.

17 Q But not for military uses in combat within
18 a city?

19 A You know, I don't know that the military
20 ever experimented with those revolving shotguns. They
21 certainly may have, I'm just not familiar with whether

1 they have or not.

2 Q Are you comfortable with the idea then that
3 a Street Sweeper should not be available to civilians?

4 A No. It's just a shotgun.

5 Q With a revolving cylinder?

6 A Like revolvers have revolving cylinders.

7 Q But it shoots the same number of
8 projectiles as a revolver?

9 A It's a revolver, yes, sir. Oh,
10 projectiles. No, I'm sorry. Same number of rounds,
11 yes.

12 Q It shoots shots, correct?

13 A Yes, sir, it does, like all shotguns.

14 Q You can fill a street pretty quickly with a
15 revolving cylinder shotgun, right?

16 A Or with a standard semi-automatic or pump
17 shotgun, yes, sir.

18 Q But you can do it quicker with a revolving
19 cylinder shotgun because you can get more rounds off?

20 A No, not necessarily.

21 Q Okay. I think your resume mentions that

1 you do some training for the NRA?

2 A I'm certified as a trainer for the NRA. I
3 haven't done a great deal of formal training with that
4 certification.

5 Q Have you trained anyone else on use of an
6 AR-15 or AK-47?

7 A Only informally, never through a formal
8 training session.

9 Q And in what context did you do that
10 training?

11 A Usually, that will be for a range session
12 where we're having an individual or a group experience
13 shooting various firearms. It could be from
14 muzzleloaders up through modern firearms. In that
15 case, I would be overseeing and supervising individuals
16 shooting a number of different types of firearms,
17 including AR-15 and AK-platform guns, possibly. It
18 would depend on the group and the program.

19 Q Would you generally instruct people on how
20 to use those guns? In what context would you instruct
21 people on how to use those guns?

1 A Only very general instruction. The primary
2 focus would be on firearm safety and handling the gun,
3 and firing the gun safely in a range situation.

4 Q Would you consider people who didn't have
5 that kind of training safe to use the gun?

6 A Which kind of training?

7 Q The training you just mentioned.

8 A I think for any firearm, training is
9 advisable.

10 Q Including experience firing the gun?

11 A I think -- I'm sorry. Ask that last one
12 again.

13 Q Including experience firing the gun?

14 A What including experience firing the gun?

15 Q You said, "For any firearm, training is
16 advisable."

17 And I'm asking: Does that include training
18 firing that particular gun?

19 A I'd say, yes, sir. I would think effective
20 training would include firing the gun.

21 Q Have you ever personally fired an M16?

1 A I don't think I have.

2 Q Have you ever personally fired any gun
3 designed for military use in the United States?

4 A Yes, sir.

5 Q Which one?

6 A Gosh, I've shot the M3 Grease gun, the
7 Thompson submachine gun, a couple of crew-served
8 machine guns. Although, I can't remember the specific
9 models.

10 Q You said "crew-served machine gun"?

11 A That would be a machine gun that is not
12 fired from the shoulder. It would usually be mounted
13 on a tripod or a vehicle like a tank or Jeep. And it
14 generally will have at least a shooter and a loader.
15 It's more than a one-person operation in most cases.

16 Q Have you ever fired any of the guns we were
17 looking at in the Army Marksmanship Manuals, M4 series?

18 A Those variations of the M16?

19 Q Yes.

20 A I'm not sure. I may have, but I don't
21 specifically remember it. If I had, it would probably

1 be a fairly early M16, but I just don't remember if I
2 have or haven't.

3 Q And your answer reminded me that I
4 neglected to ask a question, which is whether the M4 is
5 a variation of the M16?

6 A I would consider it to be such.

7 Q Carbine?

8 A A shorter, more compact version is my
9 understanding.

10 Q Is the term "carbine" not appropriate in
11 that context?

12 A I'm okay with it. I don't know that that's
13 the term the military uses. They may.

14 Q How fast can a trained shooter change a
15 magazine on a gun?

16 A Depends to a certain extent on how much
17 training and what type of gun. There are guys who are
18 dedicated to different types of sport shooting that
19 will get very, very fast in magazine changes. Just ask
20 guys who are shooting revolvers in certain types of
21 sport competition. They get very, very fast with

1 street loaders.

2 A shooter with an average amount of
3 training, it will depend on how much range time they
4 spend practicing. Most range setups are not always
5 conducive to practicing fast magazine changes.

6 Q Why not?

7 A I think it's a safety issue. Because when
8 you are doing administrative handling on a firearm that
9 would be doing something other than aiming or shooting
10 it, the shooter will tend to get less conscious of what
11 direction the muzzle is pointing. So an inexperienced
12 or under-trained shooter may let the muzzle cover other
13 people on the range, or go in a direction it shouldn't
14 while they're attempting to make the magazine change.

15 Q That's one of the reasons my wife doesn't
16 want me to go to the shooting range.

17 A Get a single-action revolver.

18 Q So do you have a sense of how fast you
19 could change a magazine?

20 A I'm not very fast.

21 Q How fast would you say?

1 A I shoot a lot of different guns. So I
2 would look at the gun. I would figure out where the
3 magazine release was. I would release the magazine.
4 If you're doing serious combat training, you're going
5 to let it drop off on the ground. If you're not,
6 you're going to take it out and put it on the bench.

7 You're going to find your loaded magazine.
8 You're going to insert it. You're going to push it.
9 You're going to either rack the slide and release it to
10 load a new round, or you're going to push the slide
11 release to let the slide come forward and chamber
12 around. So that's, what, maybe five seconds, if I'm
13 doing that efficiently.

14 Q And if you're not doing it efficiently, it
15 would take longer?

16 A Oh, I can fumble around for a long time.

17 Q As many shooters can?

18 A Yeah, exactly.

19 Q Is it fair to say that if you don't have
20 the magazine at hand, it would take you longer?

21 A If I have to go back to my office to get it

1 and load it, yeah, that's going to take me 20 minutes.

2 Q If it's not present in a belt or a pocket
3 in whatever you're wearing when you're shooting, it
4 would probably take longer than five seconds, right?

5 A If it's not present, it's not present.

6 Q And it's true that if you're nervous, it
7 might take even longer to take a change a magazine?

8 A Yes. I think shooting in a high stress
9 situation makes it more difficult.

10 Q And that's true both of criminals and of
11 people who might be using the gun defensively?

12 A It would probably be true of about anybody
13 other than somebody who is very, very intensively and
14 regularly trained.

15 Q Are you familiar with the device called a
16 bump stock?

17 A I am now.

18 Q When you say you are now, when did you
19 become aware?

20 A I was generally familiar with them for a
21 while. I hadn't paid much attention to them until the

1 Las Vegas shooting incident where they were reportedly
2 used.

3 Q What is the purpose of a bump stock?

4 A My understanding is that a bump stock
5 simulates full-auto fire on some semi-auto long guns.
6 I also understand that there is supposedly some
7 application of that type of device for certain disabled
8 shooters, but I don't fully understand what that
9 function is.

10 Q Do you understand how a bump stock works?

11 A Generally, I think I do now.

12 Q Can you explain it.

13 A My understanding is that it is a device
14 that slips over the butt stock of a semi-automatic
15 rifle. I think it has to be designed for the specific
16 model, semi-automatic rifle. And that it extends -- a
17 portion of it extends partway into the trigger guard.

18 My understanding is that the idea is that
19 the trigger finger rests on the extension so that when
20 the gun is first fired, the recoil takes the shooter's
21 fingers off of the trigger. And then as the gun is

1 pushed forward, the shooter's finger is in position to
2 fire a subsequent round.

3 And I assume that continues as long as
4 there are rounds of the magazine, or as long as the
5 shooter's finger stays in position, and as long as the
6 firearm is properly positioned on the shooter's
7 shoulder to allow that type of function.

8 Again, I'm not sure if you're -- if a
9 shooter would use this holding the gun freestyle
10 without being braced on it against his shoulder, or if
11 it's used with the gun in a traditional manner pressed
12 against his shoulder.

13 Q And is the purpose of the device to speed
14 the rate of fire beyond what a semi-automatic firing
15 rate would normally be?

16 A My understanding is that the device is to
17 come close to simulating the rate of fully-automatic
18 fire. Again, supposedly, they're handicapped
19 applications. I'm just not sure what those are and how
20 those work.

21 Q Are you aware that bump stocks are designed

1 for AR-15 weapons?

2 A I have the impression that that is the
3 primary gun that they're designed for. There may be
4 others, I don't know.

5 Q So have bump stocks been available to
6 civilians in the United States?

7 A They've been available for a number of
8 years, yes, sir.

9 Q And you don't have any information about
10 how many might have been purchased?

11 A No, I don't.

12 Q And you don't know how often they're used
13 when people shoot, do you?

14 MR. SWEENEY: Objection.

15 THE WITNESS: My impression is that they're
16 not used very often. They have been kind of a novelty
17 device for most people who use them.

18 BY MR. KLEIN:

19 Q What's your impression there based on?

20 A Just anecdotal discussion with other
21 shooters and other firearms enthusiasts.

1 Q Based on your knowledge of guns, is it your
2 impression that the Las Vegas shooter, Stephen Paddock,
3 used a bump stock?

4 A That's what I hear from the media. I
5 really don't know from the little bit that I've seen
6 and heard of the news reports on that. But my
7 understanding is that that's what's been reported.

8 Q Did you listen to the rate of fire in any
9 of the videos that were available of the shooting?

10 A I did.

11 Q Did it sound to you like a rate of fire
12 consistent with automatic weapons?

13 A Given that I don't have a great deal of
14 experience with automatic firearms, that was my initial
15 impression is that it would have probably been an
16 automatic firearm.

17 Q Based on what you heard?

18 A Yes, sir.

19 Q Based on how quickly the shots were,
20 audible on the tape, right?

21 A Yes, sir.

1 Q Is it your view that civilians should be
2 allowed to modify their guns to use bump stocks?

3 A Ask that again, please.

4 Q Is it your view that civilians should be
5 allowed to modify their guns to use bump stocks?

6 A My personal opinion on it is that it's
7 reasonable for the ATF to take a second look at their
8 initial ruling on permitting bump stocks without
9 restriction. I think it's something that -- it's
10 legitimate to review.

11 Q What did the ATF initial ruling consist of?

12 A My understanding is that the ATF decided
13 there should be no restrictions on bump stocks.

14 Q Does the ATF have authority to ban bump
15 stocks?

16 A I don't know if they do or not. That would
17 be a legal question.

18 Q Is it your view that somebody, whether it's
19 the ATF or another regulatory authority, should
20 restrict civilian access to bump stocks?

21 A My opinion is that that should be subject

1 to an ATF review, revisiting their previous ruling.
2 That's where I would go first. I think they'd probably
3 have the expertise to address that question.

4 Q And that's consistent with the NRA's view
5 of that question?

6 A I believe it is. I'm not their spokesman
7 on that matter.

8 Q If I wanted to buy a bump stock today,
9 could I buy one on the Internet?

10 A I assume you could. I don't know that
11 there is any restriction in place. Usually, whenever
12 there is a perspective legislative restriction or
13 regulatory restriction on anything firearms related,
14 there is a rush to buy them before the restriction
15 comes into place. So speculating entirely, they may be
16 in short supply now.

17 Q Is it your assumption that bump stocks have
18 been more popular based on people's belief that they
19 may be restricted?

20 A That usually happens in the firearms
21 market. Whenever there is a prospect of something

1 being restricted, folks who are interested generally in
2 that type of thing, will want to go ahead and buy one
3 while they still can.

4 Q Are you familiar with device called a
5 binary trigger?

6 A I have heard the term, but I don't know
7 exactly how that functions. I have a general --
8 function that it allows a shooter -- it -- I have a
9 general impression that it allows a shooter to fire a
10 round both on the pull of the trigger and the release
11 of the trigger. But I may be way off on that.

12 Q If your general impression is right, and I
13 think it is, does that double the rate of fire that one
14 can achieve with a semi-automatic weapon?

15 A I don't know that it doubles it, but it
16 should increase it.

17 Q And that's because two rounds go off with
18 every pull of the trigger?

19 A That would be correct.

20 Q Do you know if they're illegal in the
21 United States?

1 A I have the impression that they are. That
2 surprises me a little bit. It would seem -- I don't
3 know the specific law. I have the impression that a
4 definition of a machine gun is firing more than one
5 round with a single pull of the trigger. And it would
6 seem to me that that would be firing two rounds with a
7 single pull of the trigger. So I'm a little bit
8 surprised, but I'm sure that there are reasons that
9 somebody has for the sale being permitted.

10 Q Are you familiar with a device called a
11 trigger crank?

12 A Yes, sir.

13 Q How does a trigger crank work?

14 A Well, the practical function is similar to
15 Gatling guns. They were introduced around the time of
16 the Civil War. It is a crank that is attached to the
17 trigger guard, and it's rotated and has multiple
18 strikers that will strike the trigger in passing. And
19 presumably, a higher rate of fire could be attained
20 with that than with pulling the trigger individually
21 very rapidly.

1 I haven't seen them used -- I don't know if
2 that's factual or not that that rate of fire can be
3 significantly higher.

4 Q Is the purpose of the design to have the
5 projections on the crank strike the trigger more often
6 than your finger would be able to strike the trigger?

7 A That's my impression, yes.

8 Q If so, that would speed the rate of fire
9 beyond what a semi-automatic weapon could achieve?

10 A I believe that's the intention. Again, I
11 haven't really seen them demonstrated to know that for
12 sure.

13 Q Do you know if there are trigger cranks
14 available for use of AR-15 type guns?

15 A I assume there would be, but I don't know
16 that for certain.

17 Q Do you know if there are trigger cranks
18 available for use with AK-pattern guns?

19 A Again, I don't know for certain, but it
20 wouldn't surprise me.

21 Q There is no reason why that couldn't be

1 designed, right?

2 A It seems like it would be a fairly
3 adaptable design. It just has to fit the trigger guard
4 in the firearm. So it could fit AK-patterns, ARs, any
5 semi-automatic firearm.

6 Q Do you know if I can buy a trigger crank
7 today for an AR-15 on the Internet?

8 A Again, I sort of assume you could. I don't
9 know that for a fact.

10 Q Is it your opinion that civilians should be
11 allowed to modify their guns to use a trigger crank?

12 A Again, I think it's legitimate fodder for
13 ATF review.

14 Q Are you familiar with a device called an
15 AutoGlove?

16 A No, I'm not.

17 Q If I told you that it vibrates your
18 fingers --

19 A Sounds relaxing, therapeutic.

20 Q It if I told you that it's designed to
21 vibrate your finger on a trigger faster than you could

1 pull it yourself, would that make sense to you?

2 A Well, it would seem a little silly to me,
3 but maybe they do exist, and maybe they do work. I've
4 never heard of them.

5 Q I think this is a good place for a lunch
6 break.

7 (Recess.)

8 BY MR. KLEIN:

9 Q We're back on the record after a lunch
10 break. I just want to remind you that your testimony
11 is under oath.

12 Is it your opinion, Mr. Supica, that all
13 firearms are dangerous?

14 A All firearms can be dangerous, yes, sir.

15 Q Isn't it true, though, that some are more
16 dangerous than others?

17 MR. SWEENEY: Objection.

18 THE WITNESS: Boy, that's going to depend
19 on what you are talking about when you say "dangerous."

20 BY MR. KLEIN:

21 Q Well, that more people can be killed or

1 injured in a short time than other firearms?

2 A I think it's true that more people could be
3 killed or injured with certain firearms than with
4 others.

5 Q And that's because the gun that has more
6 power, the rounds are more likely to cause serious
7 injuries; isn't that also a basis on which some
8 firearms are more dangerous than others?

9 MR. SWEENEY: Objection.

10 THE WITNESS: Firearms are designed to hit
11 things with power, and the level of power needs to be
12 appropriate to the use. And there is a balance there.
13 So "dangerous" in terms of being effective for an
14 intended use, that's going to vary from firearm to
15 firearm, and the intention with which it's being used.
16 BY MR. KLEIN:

17 Q In the hands of a criminal, would you
18 concede that an AR-15 style weapon is more likely to
19 cause death or serious bodily injury than a
20 revolutionary iron musket?

21 MR. SWEENEY: Objection.

1 THE WITNESS: For a single round, not
2 necessarily.

3 BY MR. KLEIN:

4 Q But for multiple rounds being fired?

5 A Most Revolutionary War muskets would be
6 very, very slow to fire out a multiple round -- so, an
7 AR would be more effective at hitting multiple targets
8 in a shorter period of time than a Revolutionary War
9 musket.

10 Q Let me ask the same question in a different
11 way. We talked a little bit about the Las Vegas
12 shooting.

13 Would you concede that he was able to kill
14 or injure more people with the AR-15 that he apparently
15 used than if he had had a Revolutionary era musket?

16 A Yes.

17 Q In fact, the reason that some guns are more
18 dangerous is that over time, they've been developed by
19 military to be effective in combat, right?

20 MR. SWEENEY: Objection.

21 THE WITNESS: The evolution of firearms

1 between civilian uses or nonmilitary uses and military
2 uses has been parallel. And advances in one have been
3 adopted in the other throughout history since they were
4 first introduced.

5 BY MR. KLEIN:

6 Q And the military's goal in firearms design
7 is to make them more lethal to combat the enemy,
8 correct?

9 MR. SWEENEY: Objection.

10 THE WITNESS: That would be one of a number
11 of goals, I'm sure.

12 BY MR. KLEIN:

13 Q But it would be one of the goals, right?

14 A Yeah. A gun is made to be effective for a
15 specific purpose. And the military killing the enemy
16 or injuring the enemy is a primary purpose of their
17 firearms.

18 Q And as the military seeks out more
19 potentially lethal weapons, those weapons become more
20 dangerous in the hands of criminals, correct?

21 A No.

1 MR. SWEENEY: Objection.

2 THE WITNESS: The military hasn't always
3 sought out more lethal weapons. Depending, again, on
4 your definitions of lethal and dangerous, the AR-15,
5 the M16, was a step down in the military in terms of
6 the power of an individual round. From the .308
7 Winchester class of cartridge used in the M14 and the
8 .30-06 cartridge used in World War I and World War II,
9 it was a less powerful and less lethal round than had
10 previously been used.

11 BY MR. KLEIN:

12 Q And the military chose it to make it more
13 effective in combat, correct?

14 MR. SWEENEY: Objection.

15 THE WITNESS: I believe they did.

16 BY MR. KLEIN:

17 Q And isn't it true that to the extent a
18 weapon is more effective in combat, that weapon is also
19 more effective for criminal uses against civilian
20 targets?

21 MR. SWEENEY: Objection.

1 THE WITNESS: Not necessarily.

2 BY MR. KLEIN:

3 Q So the ability to get off more rounds isn't
4 equally important to a criminal as it is to the
5 military?

6 MR. SWEENEY: Objection.

7 THE WITNESS: The ability to get off a
8 number of rounds is not at all specific to military
9 firearms. That's been a continuous goal throughout
10 firearms evolution.

11 BY MR. KLEIN:

12 Q To get off more rounds and to have them
13 more likely to hit their targets, correct?

14 A Yes, sir.

15 Q When the military is able to successfully
16 achieve that to make the weapon more effective in
17 combat, isn't that same weapon then equally more
18 effective in the hands of a criminal?

19 A Or in the hands of a civilian using it for
20 legitimate purposes that are related to the firearm.
21 Generally, yes, if given the same purposes.

1 Q So the civilian purpose that we're talking
2 about would involve perhaps killing lots of people very
3 quickly. Is that the civilian purpose you're talking
4 of?

5 MR. SWEENEY: Objection.

6 BY MR. KLEIN:

7 Q That can now get to a criminal purpose?

8 MR. SWEENEY: Objection.

9 THE WITNESS: The AR-15 platform rifles are
10 used by civilians very widely for a number of purposes.
11 They're used for target competition. They're used for
12 hunting. They're used for recreational shooting.
13 They're used for personal defense. Like any other
14 firearm, they're subject to use by criminals.

15 BY MR. KLEIN:

16 Q I want to restrict ourselves in this
17 discussion to the purposes that make the guns dangerous
18 to other human beings, okay?

19 MR. SWEENEY: Objection.

20 THE WITNESS: Define "dangerous to other
21 human beings."

1 BY MR. KLEIN:

2 Q Making it more likely that they will be
3 killed or injured.

4 MR. SWEENEY: Objection.

5 THE WITNESS: By a person shooting at them
6 with intention to hurt or kill them?

7 BY MR. KLEIN:

8 Q Yes.

9 A Okay.

10 Q So the same things that make the gun more
11 effective for the Army to achieve those purposes make
12 them more effective for criminals to achieve those
13 purposes?

14 MR. SWEENEY: Objection.

15 THE WITNESS: I don't think that's what we
16 just said, the question before.

17 BY MR. KLEIN:

18 Q Okay. We can have the questions read back
19 if you think it will be helpful.

20 A Let's try that.

21 (Record read.)

1 BY MR. KLEIN:

2 Q We can try again. For the purposes of this
3 discussion, I want to limit the questions to the
4 aspects of the gun that make it useful for killing more
5 people or injuring more people more quickly.

6 You agree that over time, guns can -- have
7 become more dangerous on those terms, right?

8 MR. SWEENEY: Objection.

9 THE WITNESS: Let's ask the question in
10 terms of the way you originally phrased it, and then we
11 can address "more dangerous." Have guns become more
12 effective at killing and injuring larger number of
13 people over the evolution of firearms? And for guns
14 that are intended to be used by an anti- -- in an
15 anti-personnel role, whether by the military or the
16 police or legitimate defenders or criminals, that's
17 true.

18 BY MR. KLEIN:

19 Q So the answer is yes?

20 A Yes.

21 Q And I assume that means you'll also concede

1 that guns of this century are more effective at killing
2 and injuring people more quickly than guns of the 18th
3 century, for example?

4 MR. SWEENEY: Objection.

5 THE WITNESS: 18th or 19th, or do you care?

6 BY MR. KLEIN:

7 Q Let's start with the 18th --

8 A Okay. Yes, they would be.

9 Q And for the 19th century?

10 MR. SWEENEY: Objection.

11 THE WITNESS: We're talking throughout
12 specific types of firearms?

13 BY MR. KLEIN:

14 Q Right. The types available now as compared
15 to the types available to Army, civilians, criminals,
16 in the 18th century.

17 A I think throughout history, that's been one
18 of the goals for which firearms have been used. And
19 there has been continuous successful efforts to improve
20 that aspect of firearms use.

21 Q To the extent that those attributes make

1 those guns more desirable in the military context,
2 those same attributes might make them more desirable
3 for criminals, right?

4 MR. SWEENEY: Objection.

5 THE WITNESS: Well, given that a vast
6 majority of the guns that are more effective in the
7 military are highly restricted for civilian ownership,
8 and that usually criminal use of them would have been
9 obtaining them through a criminal means, yeah.

10 BY MR. KLEIN:

11 Q Did the shooter in Las Vegas obtain his gun
12 through criminal means?

13 A You know, I don't know the full details,
14 but I understood that he bought them legitimately. I
15 don't know that that's entirely been disclosed yet.

16 Q And he used those guns, which didn't have
17 select fire, to kill 59 people and injure more than
18 500, correct?

19 MR. SWEENEY: Objection.

20 THE WITNESS: That's my understanding.

21 ///

1 BY MR. KLEIN:

2 Q Let's go to your report, which I believe is
3 Exhibit Number 2. This is where I might start to get a
4 little fuzzy with my numbers.

5 A Okay. I got it.

6 Q Would you turn to page 3 of your report.

7 A Which page, please.

8 Q Three, please.

9 A Yes, sir.

10 Q In your -- is the material there labeled
11 Number 1, your first expert opinion in this matter?

12 A Yes, sir.

13 Q And it says there:

14 "A central goal has been the ability to
15 deliver multiple repeat shots on target as quickly as
16 possible with minimal effort and disruption to the
17 shooter."

18 A Yes.

19 Q Those are desirable characteristics for
20 someone interested in a mass shooting of human beings,
21 aren't they?

1 A Those are desirable characteristics for
2 firearms for a number of purposes. In certain criminal
3 uses, that would be a desirable aspect to the criminal.

4 Q And if the target is other humans, that
5 sentence still applies, right?

6 A That's -- yes.

7 Q So you make a point here about one of the
8 purposes of gun advances is safety of the shooter and
9 for unintended targets.

10 Do you see that?

11 A Yes, sir.

12 Q I'm interested in that point. Are you
13 familiar with smart gun technologies?

14 A I think I generally am familiar with the
15 concept.

16 Q What is that?

17 A I think it is trying to develop a firearm
18 that can only be used by a specific individual.

19 Q Does that limitation make those guns more
20 safe for the shooter?

21 A To my understanding, not necessarily at

1 this state of the art. I don't think that's been
2 perfected or effective yet. And a firearm that doesn't
3 function reliably is not safe to a shooter if he's
4 trying to use it in a self-defense situation.

5 Q If the technology were effective, would it
6 be safer for the shooter to be the only one who could
7 fire the gun?

8 MR. SWEENEY: Objection.

9 THE WITNESS: If that shooter is -- I'm not
10 sure how that is safer to the shooter. I'm not sure
11 what risk to the shooter of the gun that is preventing.
12 It would prevent another person from using that gun to
13 shoot the shooter with it, or shoot the owner. Is that
14 what you're getting at?

15 BY MR. KLEIN:

16 Q Wouldn't that make the gun safer for the
17 shooter?

18 MR. SWEENEY: Objection.

19 THE WITNESS: Or the gun not to be able to
20 be used by somebody other than the shooter -- against
21 the shooter? It's not the shooter if he's not

1 shooting.

2 BY MR. KLEIN:

3 Q Right. The owner.

4 A Okay. Yeah. I think that would probably
5 be the intention of that line of development. One of
6 the intentions.

7 Q Wouldn't it also be safer for unintended
8 targets?

9 MR. SWEENEY: Objection.

10 THE WITNESS: I don't think so. The
11 shooter is intending to shoot a target.

12 BY MR. KLEIN:

13 Q If the gun is stolen from the shooter, but
14 can't be used by the person --

15 A It was an operative, yeah. It doesn't
16 pertain to the shooter, but to the person who does not
17 -- the person who is not encoded to be able to use that
18 gun -- would not be able to use it against other
19 people.

20 Q Does the speed at which a gun can be fired
21 indiscriminately make it unsafe?

1 MR. SWEENEY: Objection.

2 THE WITNESS: Firing any gun
3 indiscriminately is an unsafe practice. Ability to
4 fire a gun rapidly and indiscriminately does not make
5 the gun itself unsafe.

6 BY MR. KLEIN:

7 Q Isn't it more unsafe than a gun that can't
8 fire as quickly --

9 MR. SWEENEY: Objection.

10 THE WITNESS: That's an unsafe practice
11 regardless of how quickly the gun is firing.

12 BY MR. KLEIN:

13 Q It's an unsafe practice that's based on the
14 capacity of the gun, correct?

15 MR. SWEENEY: Objection.

16 THE WITNESS: Would you restate that for
17 me.

18 BY MR. KLEIN:

19 Q It's an unsafe practice that's based on the
20 capacity of the gun --

21 A What is an unsafe practice, please?

1 Q The ability to fire indiscriminately is
2 more unsafe when the gun can be fired indiscriminately
3 more quickly, correct?

4 MR. SWEENEY: Objection.

5 THE WITNESS: You'll have to parse that a
6 little more for me.

7 BY MR. KLEIN:

8 Q I'll move on. So in the paragraph closer
9 to the bottom of the page, I want to ask you a little
10 bit about matchlock, wheel lock, and various flintlock
11 types of actions.

12 A Okay.

13 Q In the context of your opinion there, are
14 you using ignition systems and type of actions
15 synonymously?

16 A Yeah, I think those are pretty similar
17 terms.

18 Q So what you're saying here is:

19 "In the 14th through the 17th centuries,
20 the most significant development in firearms design
21 were in the form of ignition systems evolving through

1 hand cannon, matchlock, wheel lock, and various
2 flintlock types of actions."

3 Can you describe to me what a flintlock
4 type of action is.

5 A Generally, a flintlock uses the propensity
6 of steel when struck with flint to create a spark to
7 ignite gun powder in a pan that commutes that ignition
8 to the gun powder in the barrel of the gun to fire the
9 projectile or projectiles.

10 Q Wasn't it the case with flintlock actions
11 that some guns were unreliable because the spark didn't
12 ignite the powder?

13 A Yeah. And part of the point of that
14 sentence is that these actions were continually
15 evolving from less reliable to more reliable.

16 Q And as reliable as it got through the 17th
17 century, flintlock is at the top of the list, right?

18 A Through the 17th century?

19 Q That's what your sentence says, right?

20 A Yes.

21 Q At the end of the 17th century, which is

1 the 1600s, you acknowledge that in the hierarchy of
2 actions, flintlock was number one?

3 A It was number one in terms of reliability
4 and cost of production combined.

5 Q So in a flintlock type of action, was the
6 charge separate from the projectile?

7 The charge is the gun powder, right?

8 A Right. In most types of powder ignition,
9 the projectile is packed right against the powder. So
10 that would be true, I think, in all of those types of
11 actions. And it's still true today that in a
12 self-contained cartridge, the projectile is packed
13 right against the gun powder in the cartridge in most
14 cases.

15 Q But there is a big difference between the
16 types of cartridges available today and the way a
17 flintlock gun was fired in that the cartridge today is
18 loaded into the gun, and at the end of the 17th
19 century, as you stated here, you had to load a
20 projectile and the charge separately, correct?

21 MR. SWEENEY: Objection.

1 THE WITNESS: Generally, the process for
2 most of these action types that we're talking about is
3 to pour gun powder down the barrel, and then put the
4 projectile on top of the gun powder. Now, that can
5 generally be two separate actions. At some point in
6 firearms evolution -- and I don't know if we saw that
7 by the end of the 17th century or not.

8 The practice of preloading powder and
9 bullet or projectile in a paper or linen cartridge came
10 into being to where it was a simpler and more efficient
11 process. But, generally, that's a process that is used
12 for all of these early muzzleloader type of firearms.

13 BY MR. KLEIN:

14 Q Can you explain what the term
15 "muzzleloader" means.

16 A Muzzleloader means that the firearm is
17 loaded from the front end of the barrel. That would be
18 in most of these cases. The powder is poured down, and
19 then either the bullet or the shot charge is pushed
20 down the barrel from the front end of the barrel to the
21 rear end where the ignition occurs.

1 Q And I'm interested in why you stopped here
2 at the end of the 17th century --

3 A I think --

4 Q -- when flintlock type of action was really
5 the only type of action through the end of the 18th
6 century, wasn't it?

7 A End of the 18th century. I think -- yeah.
8 The flintlock was the predominant action probably for a
9 longer period of time than any other action type, and
10 that went well into the 18th century.

11 Q Went through the end of the 18th century,
12 didn't it?

13 A Yeah, I believe it did. I think percussion
14 was early 19th century.

15 Q Let's turn to page 4. Thank you for the
16 nice pictures of guns. I think they make the report
17 more interesting.

18 A Good. I'm glad.

19 Q So let's start with the Cookson Volitional
20 Repeating Flintlock, seven-shot capacity.

21 At the bottom of that paragraph, you say,

1 "Limited production."

2 What do you mean by that?

3 A Not a great many were made.

4 Q About how many, would you say?

5 A I don't know a number off the top of my
6 head. I use phrases like that throughout this history
7 of firearms to indicate kind of how widely used and
8 widely produced they were. Some of them were very
9 limited. They were in an advance in technology, but
10 not widely successful and widely adopted.

11 Q Do you know why production was of the
12 Cookson Volition Repeating Flintlock was limited?

13 A That one specifically, no. But I can
14 comment in general why some of these improvements in
15 firearms were not widely produced. That would usually
16 be a combination of effectiveness and cost. A lot of
17 times, these would not be completely perfected at the
18 time they were developed. And often, they would be
19 much more expensive than other types of firearms.

20 Q And do you think that applies to the
21 Cookson that you described here?

1 A I suspect that it does.

2 Q Cookson was muzzle loaded, was it not?

3 A No, it was not. It was loaded from two
4 internal magazines on the gun. One for powder, and one
5 for the ball. And those were worked, I believe, by a
6 crank to load successive rounds into the breach of the
7 barrel, the rear end of the barrel.

8 Q How would you get the powder into the gun?

9 A It's loaded into a magazine that's part of
10 the gun. So you've got a magazine of gun powder, and
11 you have a magazine of lead bullets that are an
12 integral part of that gun.

13 Q How did you get the gun powder into the
14 magazine?

15 A The Cookson is illustrated there. And if
16 you look at the left side of the gun, the full length
17 picture of the gun, you see a crank there. And you
18 would operate that crank by hand, and that would move
19 -- I think it took two strokes, and I haven't
20 manipulated this action, so I can't say for certain.

21 My understanding is that one stroke, the

1 loading mechanism would pick up the lead ball to load
2 into the barrel. And then the next stroke, it would
3 pick up the powder to load behind the ball. But these
4 are not occurring from the muzzle end of the gun,
5 they're occurring from the rear or the breach end of
6 the gun.

7 Q But you still had to load to projectiles,
8 the balls, into the magazine through the muzzle, didn't
9 you?

10 A No. No. No. Those are magazines that are
11 mounted on the gun, just like loading a magazine today
12 on a semi-automatic --

13 Q Show me where on the weapon the magazine is
14 positioned since we have a picture.

15 A Yeah. I believe they're mounted behind the
16 action, behind the lock. Again, I'd have to handle the
17 specific specimen to be sure. They're not separate.
18 The powder and the balls are carried in the mechanism
19 of the weapon itself.

20 Q So even under your vision of how this gets
21 loaded, they still have to be loaded separately,

1 correct?

2 A Two strokes. One for the ball, one for the
3 powder.

4 Q Well, would you take the magazine off, load
5 it, and then reattach it, is that what --

6 A It may have been that you opened a
7 compartment and loaded it that way. I don't think
8 these had easily detachable magazines. I think that
9 there were compartments in the firearm itself where you
10 would load the lead balls, and then a separate
11 compartment for the gun powder.

12 Q Where were these produced, if you know?

13 A Gosh, I don't know.

14 Q Somewhere in Europe?

15 A Cookson introduced -- I think that Cookson
16 was an American version, if I recall, of the Lorenzoni
17 guns that were being produced in Europe. They were an
18 American adaptation of the system originally developed
19 in Europe.

20 Q Do you have an example of a gun at the NRA
21 museum?

1 A The Cookson, yes, we do. I think that's
2 the picture of the Cookson that's included in the
3 report.

4 Q Let's talk about the Belton Repeating
5 Flintlock next.

6 A Okay.

7 Q It says they are very limited production.
8 Do you see that?

9 A Yes.

10 Q What do you know about the production of
11 the Belton Repeating Flintlock?

12 A In terms of numbers?

13 Q Uh-huh.

14 A Again, very limited production. I don't
15 know that there was ever a large number produced. They
16 were demonstrated, as it says, in the opinion, there
17 was -- one was demonstrated to British ordinance in
18 1784, but they declined to purchase a significant
19 number of them. They had been demonstrated in America,
20 but I don't know how many of them total were made.

21 Q You don't know, as you sit here, about any

1 problems with the gun that prevented them from being
2 adopted by any armies, right?

3 A The reason the Continental Congress gave
4 for canceling their order for Cookson Repeaters was the
5 prices that was being quoted. The inventor was very
6 cagey and nonspecific in how he was trying to price the
7 guns to the government.

8 Q And you have a quote here that the gun was
9 reported as firing 16 or 20 rounds in 16, 10 or five
10 seconds of time.

11 What does that mean?

12 A That's a quote. That's what they said.

13 Q You don't know whether it was 16, 10 or
14 five seconds?

15 A I think those were -- I would have to
16 speculate. I would speculate that that applied to
17 different models and different loadings of the firearm.

18 Q And the gun was loaded through the muzzle,
19 correct?

20 A This was a muzzleloader, yes, sir.

21 Q And you had to individually load each

1 charge through the muzzle?

2 A Yes.

3 Q They would stack up against each other?

4 A Yes, sir.

5 Q Now, below that, you have a sentence, "The
6 founders were very familiar with multiple shot
7 repeating firearms at the time the Second Amendment was
8 drafted."

9 What do you base that on?

10 A The Continental Congress attempting to
11 order 100 of these in 1777.

12 Q But they never saw the guns used, correct,
13 because the order was canceled?

14 A I don't know if they saw it demonstrated or
15 not. I have an impression that they may have seen it
16 demonstrated, but I don't know that for sure.

17 Q You have an impression based on what?

18 A Just reviewing the reports on these. Like
19 I say, I can't give you a specific instance.

20 Q Where do you find the reports on these?

21 A You can find quite a bit of information

1 about it online, and then they're in various books,
2 too. I think one of the books that I referenced for
3 this chapter has the information on the Belton.

4 Q But you don't know that the founders were
5 very familiar with multiple shot repeating firearms --

6 A Surely.

7 MR. SWEENEY: Objection.

8 BY MR. KLEIN:

9 Q For sure?

10 A I'm sure they were. A lot of them would
11 have owned double-barrel or multiple-barrel firearms.
12 And for the Continental Congress to order these
13 eight-shot flintlocks, they would have had to be
14 familiar with them.

15 Q Your statement here is "very familiar," but
16 you don't know they were familiar at all, do you?

17 A How familiar would you like them to be?

18 Q I'd like for you to tell me that you have a
19 basis to know that any founder even had a multiple-shot
20 repeating firearm?

21 A I reference some correspondence there

1 between Franklin and Washington talking about the
2 Belton design. And for Congress to order them, they
3 would have to be familiar with them.

4 Q Meaning, they knew they existed, but they
5 didn't know if they would work on the battlefield, for
6 example?

7 MR. SWEENEY: Objection.

8 THE WITNESS: I don't know what they knew
9 and didn't know.

10 BY MR. KLEIN:

11 Q Well, they never ordered them, so how could
12 they have known how they performed?

13 A They did order them, and they canceled the
14 order.

15 Q Correct. They never -- obviously, if they
16 canceled the order, they never acquired the gun --

17 A That's correct.

18 Q So they really wouldn't have known whether
19 the guns worked even, for example?

20 MR. SWEENEY: Objection.

21 THE WITNESS: I don't know. They may have

1 had them demonstrated to them. I just don't know.

2 BY MR. KLEIN:

3 Q They wouldn't have known if the production
4 of 100 guns was possible, would they? Because the
5 order was canceled.

6 A They placed the order.

7 Q But the order was canceled before they
8 received the production, correct?

9 MR. SWEENEY: Objection.

10 THE WITNESS: Over pricing.

11 BY MR. KLEIN:

12 Q But they wouldn't have known, if the order
13 was canceled, whether this company could even make 100
14 guns within a reasonable timeframe, would they?

15 MR. SWEENEY: Objection.

16 THE WITNESS: I would think a logical
17 assumption would be that for them to place the order,
18 they believed that the order could be filled.

19 BY MR. KLEIN:

20 Q But they --

21 A I can't say that with certainty.

1 Q You can't say whether they believed it or
2 whether they knew it, correct?

3 MR. SWEENEY: Objection.

4 THE WITNESS: I think it's more likely that
5 they believed it with reasonable certainty.

6 BY MR. KLEIN:

7 Q What would be the basis for that certainty?

8 A Placing an order to buy 100 of these.

9 Q Are you suggesting that some portion of our
10 Founding Fathers went to the place where these guns
11 were to be produced to see if it would be possible for
12 them to actually be produced?

13 A I don't know if they did or not.

14 Q They never acquired the guns, though,
15 right?

16 A That's correct.

17 Q It's very hard to be very familiar with a
18 gun you never acquire, right?

19 MR. SWEENEY: Objection.

20 THE WITNESS: It's very easy to be very
21 familiar with multiple-shot firearms. It was a pretty

1 common technology at this time.

2 BY MR. KLEIN:

3 Q So far, we haven't looked at anything that
4 you haven't described as limited production or very
5 limited production.

6 A Double barrel and multiple-barrel firearms
7 offering two or more shots were very common during this
8 era.

9 Q What was the most popular form of a double
10 barrelled gun?

11 A Probably a double barrelled shotgun.

12 Q How were those loaded?

13 A They were muzzle loaded.

14 Q How many shots could get out in a minute?

15 A If they had two barrels, they could get two
16 off almost simultaneously. So if you apply the math of
17 not counting the loading time, that would be a very
18 high rate of fire. If you apply that two shots in one
19 second, that's a remarkably high rate of fire.

20 But if you factor in the loading time, it's
21 going to take a pretty skilled marksman 30 seconds to

1 reload two barrels. That's for a pretty skilled guy.

2 Q So I would count the loading time. And so
3 what you're saying, really, is at best, maybe four
4 shots in a minute?

5 A Assuming only two barrels.

6 Q In general, the rate of fire of the guns
7 that were used in the Revolutionary War were, at best,
8 three or sometimes four shots a minute, right?

9 A Probably, yes. I think that's a good
10 generalization.

11 Q And there were many armies striving to get
12 the rate of fire up to four shots a minute in that time
13 frame, right?

14 A I would think so.

15 Q So you mentioned earlier that percussion
16 cartridges weren't available until sometimes in the
17 19th century, right?

18 A Well, the percussion system is different
19 than the cartridge system.

20 Q Why don't you describe the percussion
21 system.

1 A The percussion system, in most cases, were
2 still applied to muzzleloading arms. Although,
3 repeating arms, especially revolvers, became very
4 popular during the percussion era. The percussion arm
5 worked very similarly to a flintlock arm in terms of
6 the powder and projectile being loaded in a barrel or
7 in a chamber. And then a percussion cap was used for
8 ignition instead of flint and steel.

9 So instead of flint striking steel to
10 create a spark, to ignite a small quantity of gun
11 powder, a percussion sensitive chemical was loaded into
12 a metallic cap that was put on a hollow nipple on the
13 end of a firing chamber. And then when it's struck by
14 a hammer blow from the hammer of the gun, it creates a
15 spark that translates to the powder in the chamber and
16 fires the round.

17 They're in a different form, but a
18 percussion cap works on the same general principal as a
19 kids' cap gun that shoots a roll of paper caps. You
20 strike the cap, you make a spark. In the case of a
21 percussion firearm, that ignites the powder.

1 Q When was that system developed?

2 A I want to say the early 19th century. It
3 may be in my report, but I'm not sure. I couldn't give
4 you a closer date off the top of my head.

5 Q Can you find that in your report.

6 A Let me try to. No, I don't find it here.
7 Best of my recollection, it's going to be initially
8 developed in the 1820s sometime, and then fairly widely
9 used in the 1830s, 1840s, 1850s, 1860s.

10 Q Why didn't you include that in your report?

11 A There are lots and lots and lots of
12 firearms, evolutionary fact, that I did not include in
13 my report.

14 Q Well, you were careful to explain the
15 actions that were available in the 14th through the
16 17th century, right?

17 A I gave you a very brief general summary of
18 early firearms evolution, emphasizing that for most of
19 that time, developments in firearms technology were the
20 actions that were being developed.

21 Q And you neglected in describing that

1 summary to mention that those types of actions were the
2 only actions commonly in use through the end of the
3 18th century, right?

4 MR. SWEENEY: Objection.

5 THE WITNESS: The sentence that you're
6 referring to, let's reference that, may we?

7 BY MR. KLEIN:

8 Q Sure. Page 2. Page 3, I'm sorry.

9 A "In the 14th through 17th centuries, the
10 most significant developments in firearms designs were
11 in the form of ignition systems, evolving through hand
12 cannon, matchlock, wheel lock, and various flintlock
13 types of actions."

14 What I'm talking about there is the overall
15 evolution of firearms, and what the most significant
16 development during those centuries was. During those
17 centuries, there were a number of attempts at repeating
18 firearms, but the developments that were most effective
19 and turned out to be successful and continued, were in
20 the type of action. That's what this sentence says.

21 It doesn't represent that it's a

1 comprehensive story of the action designs of firearms.
2 It's to explain the very earliest centuries of firearms
3 development as opposed to the 17th, 18th, and 19th
4 centuries where the actions were more perfected, which
5 allowed the attempt of development of repeating
6 firearms.

7 Q So what you've neglected there is that
8 there were no further developments in the action until
9 the percussion system was designed in about 1820,
10 right?

11 MR. SWEENEY: Objection.

12 THE WITNESS: It's not neglected. That
13 wouldn't be part of that sentence or story.

14 BY MR. KLEIN:

15 Q It's not part of the story about how
16 firearms developed?

17 A It's not part of that sentence. That
18 discusses only the very early evolution of firearms
19 before there were a number of successful attempts to
20 create effective repeating firearms. The percussion
21 system is introduced at a period of time where you're

1 beginning to see effective repeaters. And the
2 percussion system does contribute to the effective
3 development of repeating firearms.

4 Q And that occurred after the Founding
5 Fathers wrote the Second Amendment, correct?

6 A Yes, it did.

7 Q What was the primary gun used in the
8 Revolutionary War?

9 MR. SWEENEY: Objection.

10 THE WITNESS: It would have been a
11 Smoothbore Flintlock Musket. There were a couple of
12 different types. The most prevalent ones would have
13 been the British Brown Bess and the French Charleville
14 pattern.

15 BY MR. KLEIN:

16 Q And those weapons were available on both
17 sides of that war, correct?

18 A Yes. Primarily, the British used the Brown
19 Bess pattern, and the Americans primarily used the
20 French Charleville patterns. Those weren't exclusive,
21 but those were the two most widely used arms.

1 Q When you call them "patterns," they were
2 available and used to manufacture guns?

3 A "Pattern" describes the type of gun. It's
4 sort of like saying "a model." But back then, guns
5 were pretty much made by individual craftsmen or by
6 groups of craftsmen. They would be working from a
7 pattern. The firearms did not have interchangeable
8 parts.

9 Each gun was individually crafted and hand
10 fitted. So you couldn't take parts out of one gun and
11 put them to the other, but they all tried to have a
12 uniform pattern.

13 Q And those were muzzleloading flintlocks,
14 correct?

15 A Yes, they were.

16 Q And that means that someone had to shove a
17 powder and a ball down the muzzle of the gun in order
18 for them to fire?

19 A Yes, that's true.

20 Q Were there any semi-automatic weapons on
21 the battlefield in the Revolutionary War that you could

1 tell me about?

2 A I don't think so.

3 Q Did the French or Indians have a better
4 design than a muzzleloading flintlock in the French and
5 Indian War?

6 A That was still the -- pretty much the state
7 of the art. At that point, there tended to be more
8 military use of rifle firearms than there had been in
9 the past. So muzzleloading rifles were seeing some
10 use, as opposed to Smoothbore, a certain amount of use
11 of rifles in the Revolutionary War and were probably a
12 little more prevalent during the French and Indian War.

13 Q In the advancement you're pointing to,
14 rifling is intended to keep a shot on target, correct?

15 A That's right. Rifling are grooves cut in
16 the barrel that, in part, extend to a projectile like
17 when a quarterback is throwing the football and puts a
18 spin on it so that it will go farther, more accurately
19 than if you just fling it.

20 Q That advancement didn't do anything to
21 speed the rate of fire of guns at the time, right?

1 A It slowed the rate of fire. They were
2 slower to load than a Smoothbore.

3 Q It was harder to get the gauge -- the ball
4 down the barrel, right?

5 A Exactly. Yes, sir.

6 Q Give me one second, please.

7 If you'd go to page 11 of your report.

8 A Yes, sir.

9 Q You have a sentence here, "The distinction
10 between semi-auto and full-auto is vitally important to
11 understand."

12 Do you see that?

13 A I'm not finding it. Yes, I do see that.

14 Q So I'm interested in your choice of the
15 adverb "vitally" there.

16 What do you mean there?

17 A To understand the issue we're addressing,
18 and especially the term "assault weapons." It's very,
19 very important to understand the difference between how
20 a semi-auto and a fully-automatic gun functions.

21 Q That's your definition of the term "assault

1 weapon," correct?

2 A No, that's borrowing the law's definition
3 of assault weapon.

4 Q So for the purpose of the Massachusetts
5 law, there is no distinction between automatic and
6 semi-automatic firearms, right?

7 A Despite some unfortunate terminology, I
8 have the impression that the Massachusetts law is
9 targeted specifically at the semi-automatic firearms.
10 They use the AK-47 terminology, which is a full-auto
11 gun. It's a machine gun. It's one that is already
12 very, very heavily restricted by the federal
13 government.

14 And it seems to me they probably intended
15 to say "semi-automatic versions of the AK," but it's
16 not what they said.

17 Q Doesn't it say "AK, all models"?

18 A I think it says "AK-47, all models." If
19 you want to, we can look at that and see what it says.

20 Q It says what it says. So the distinction
21 you're talking about here is only important if you

1 consider the defining feature of an assault weapon to
2 be the ability to fire automatically?

3 MR. SWEENEY: Objection.

4 THE WITNESS: It's vitally important if you
5 consider what type of firearms the government might
6 legitimately prohibit an individual from possessing.

7 BY MR. KLEIN:

8 Q Is that a personal opinion, a legal opinion
9 or an expert opinion?

10 MR. SWEENEY: Objection.

11 THE WITNESS: I think it's sort of experty
12 [sic].

13 MR. KLEIN: Off the record for a moment.

14 (Discussion off the record.)

15 BY MR. KLEIN:

16 Q Just because I don't think you answered my
17 question, I'm going to see if I can ask it in a
18 different way.

19 Your view is that a key feature that
20 converts a weapon into an assault weapon is its ability
21 to fire automatically, correct?

1 A Historically, the term "assault rifle" or
2 "assault weapon" was used to describe for specific
3 characteristics, and that's one of them. Now, I do
4 understand that different laws have redefined the term
5 "assault weapon."

6 Q So it's the version that you would prefer
7 from your perspective, which includes the ability to
8 shoot automatically as one of the defining features of
9 assault weapons, correct?

10 MR. SWEENEY: Objection.

11 THE WITNESS: I prefer to see terminology
12 used correctly in addressing this law. We have to
13 understand that the law redefines an assault weapon or
14 an assault rifle in a different manner.

15 Does that make sense?

16 BY MR. KLEIN:

17 Q Well, only if your definition is correct
18 and every one else's is wrong.

19 MR. SWEENEY: Object to the form.

20 BY MR. KLEIN:

21 Q So you are making an assumption that

1 pervades your entire report that the definition of
2 "assault weapon" includes the ability to shoot
3 automatically, right?

4 A I am explaining the historic evolution of
5 assault rifles. And in that history, there is a
6 specific definition -- specific characteristics that
7 distinguish an assault rifle. I don't know how
8 important that is to the rest of the report, other than
9 to understand that a term has been taken, modified, and
10 changed. That has a specific historic and technical
11 meaning.

12 Q Well, point me to where in your report you
13 are able to cite to something that defines "assault
14 weapons" in the way that you prefer.

15 A Okay. Historically, when you look at the
16 assault rifle, the primary milestone that you look at
17 is the development of the German StG 44 in World War
18 II. And that has those four specific characteristics
19 for an assault rifle. And that's where the origin of
20 the term "assault rifle" began. You want the four
21 characteristics.

1 Q No. I understand what you're saying of the
2 four characteristics, but where does the definition of
3 "assault rifle" get cited to a specific authoritative
4 source?

5 A It's attributed to Adolf Hitler. There was
6 a long series of development in the German military for
7 an intermediate power cartridge in a full-auto capable
8 long gun. At one point, Hitler discouraged this. They
9 renamed it as a pistol so it wouldn't get discontinued.
10 You're probably familiar with that general
11 history of the development of the StG 44. But
12 eventually, when it was finalized, when it was
13 developed, when it was ready for production, it was
14 reviewed. And it's attributed that Hitler developed
15 the stormy affair, or storm rifle. "Storm" in the
16 sense of the assault, as in "storm the castle."

17 So that's the origin -- the historic origin
18 of the term and the concept. And the concept is
19 important to apply in the evolution of military
20 firearms because there was a dramatic change in
21 thinking about what the primary military long arm

1 should be after World War II. And that moved towards
2 the development and adoption of long guns that fit the
3 true assault rifle definition by most, if not all of
4 the worlds militaries.

5 Q So you keep referring to something you
6 called the "true assault rifle definition."

7 What historical point do you point to that
8 makes that a true historical definition?

9 A Oh, gosh. Anywhere you look in firearms
10 history. There are a number of books over there we
11 could dig out. Let me reiterate that we're talking
12 about the historical context and that we do understand
13 that this term has been picked up and used in ways that
14 are different than the historical use. And people have
15 redefined, especially assault weapons, but also assault
16 rifles, at different times.

17 And the only point of this is that this
18 term has been borrowed and changed to be something that
19 it didn't originally represent.

20 Q So in your view, there has never been a
21 manufacturer who referred to a semi-automatic weapon as

1 an assault rifle?

2 MR. SWEENEY: Objection.

3 THE WITNESS: I think there probably have.

4 I don't think the vast majority of them have been
5 advertised that way by manufacturers, but I am certain
6 they have. I think that term started to be used more
7 broadly in the 1980s.

8 BY MR. KLEIN:

9 Q But it was used by some manufacturers
10 before 1980s to refer to certain semi-automatic
11 weapons, right?

12 A I would suspect it was used by
13 manufacturers. I think it was picked up more by people
14 who were writing about guns, but it wouldn't surprise
15 me that some manufacturers had used that term.

16 MR. KLEIN: Let's take a break.

17 (A brief recess was taken.)

18 BY MR. KLEIN:

19 Q If you could turn to page 16 of your
20 report.

21 A Okay.

1 Q There is a sentence there just below your
2 opinion number three, "Improvements in firearms
3 technology tend to be adopted for both military and
4 civilian use."

5 Is that right?

6 A Yes, sir.

7 Q And that also would include use by
8 criminals if they choose to use the guns at issue,
9 right?

10 MR. SWEENEY: Objection.

11 THE WITNESS: "Improvements in firearms
12 technology" refers primarily to them being adopted by
13 manufacturers and incorporated into requested designs.
14 It doesn't so much address the use of firearms.

15 BY MR. KLEIN:

16 Q The end users get the benefit of those
17 improvements, correct?

18 A Yes, sir.

19 Q That would be military, for one, right?

20 A Yes, sir.

21 Q And civilians for another?

1 A Yes, sir.

2 Q And criminals as well, right?

3 MR. SWEENEY: Objection.

4 THE WITNESS: Yes.

5 BY MR. KLEIN:

6 Q Then you say, "Firearms designers and
7 manufacturers have historically marketed new
8 developments for both military and civilian uses."

9 A Yes.

10 Q And that includes the various improvements
11 that make the guns more likely to be effective for
12 combat, right?

13 A In a military sense, yes. For military
14 uses.

15 Q But when they're marketed to civilians,
16 they're often marketed on the basis of the features
17 that make the guns more desirable for military uses?

18 MR. SWEENEY: Objection.

19 THE WITNESS: I would state that -- the way
20 I would state that is that in many, if not most, cases
21 the development improves the use for both military and

1 civilian use.

2 BY MR. KLEIN:

3 Q But when they're marketed to civilians, the
4 marketing often includes touting the additional
5 features that made them desirable to the military,
6 correct?

7 A The specific features?

8 Q Yes.

9 A Yes, sir.

10 Q Turn to page 17. There is a series of
11 bullet points there. All those bullets apply to the
12 development of weapons, both for civilian and military
13 use, right?

14 A Yes.

15 Q And all those additional improvements are
16 equally applicable if the gun is select fire or
17 semi-automatic, right?

18 MR. SWEENEY: Objection.

19 THE WITNESS: I think that's generally
20 correct. We might look at some specific instances, but
21 I think generally that's true.

1 BY MR. KLEIN:

2 Q Your statement below those bullets that,
3 "The semi-auto only rifles that are built on assault
4 rifle patterns tend to incorporate these improvements
5 that are functionally identical to other more
6 old-fashioned looking commercial semi-auto rifles."

7 Do you see that?

8 A Yes.

9 Q I read it correctly?

10 A Yes.

11 Q So even though they're improved, you're
12 saying they're functionally identical to other more
13 old-fashioned commercial semi-auto rifles?

14 A Functionally in terms of capacity and how
15 rapidly they can be fired, yes. They are substantially
16 identical.

17 Q So you don't -- you don't give any credit
18 to any of these other improvements as important to the
19 development of weapons?

20 MR. SWEENEY: Objection.

21 THE WITNESS: No, I'm pointing out

1 specifically that they are very important, and they've
2 been important for the development of both military and
3 sporting firearms.

4 BY MR. KLEIN:

5 Q They have improved the function of those
6 weapons over older -- what do you call them,
7 old-fashioned looking commercial semi-automatic rifles?

8 A Each of them have offered an improvement.
9 But did you ask about function?

10 Q Well, you described them as functionally
11 identical. I'm asking whether the improvements that
12 you speak about mean that they're not functionally
13 identical to the older weapons would that be
14 improvement?

15 A I'm lost there. Would you give that to me
16 again, please?

17 Q I'm asking you whether the improvements
18 that you describe in the bulleted points on this page
19 mean that the weapon after the improvements is better
20 than more old-fashioned looking commercial
21 semi-automatic rifles?

1 MR. SWEENEY: Objection.

2 THE WITNESS: Each of those listed
3 improvements can improve a specific aspect of the
4 rifle. Now --

5 BY MR. KLEIN:

6 Q Go ahead. Sorry.

7 A In general, those won't change how the
8 rifle functions in terms of how a round is fired, how
9 an empty cartridge case is ejected, how a new cartridge
10 is fed into the chamber. Functionally, in that sense,
11 in terms of the mechanical function of the rifle, these
12 improvements don't really change that. They improve
13 other aspects, such as ergonomics, safety, improving
14 manufacturing techniques.

15 Q I'm not following the distinction you're
16 trying to make.

17 Aren't those functional improvements to the
18 rifle?

19 A Depends on how you define "function."

20 Q Let's take one example and see if we can't
21 work this through. So third bullet point down,

1 "Improved ergonomics such as pistol grips, separate
2 from stocks, stock design that directs recoil straight
3 into the shoulder instead of creating muzzle flip and
4 raise sights to allow effective aiming the more
5 straight stock design."

6 Aren't those things that make the weapon
7 functionally improved over older weapons?

8 A When I'm using the term "functionally
9 identical" in the sentence below that, I'm talking
10 about how the arm functions in terms of the mechanical
11 function of the rifle including it's capacity, how
12 quickly it can be fired. The ergonomics that are
13 discussed here generally improve the shooter's
14 experience and their ability to fire the rifle
15 accurately as they're intending to fire it. But they
16 don't affect how the mechanism of the firearm
17 functions.

18 Q Isn't the ability to shoot the weapon more
19 accurately a functional improvement?

20 A Depending how you want to define
21 "function." We can go through and discuss each of

1 these if you want a different definition of function
2 than what I just gave you.

3 Q Even under your definition of function that
4 you just gave me, doesn't the ability to fire the
5 weapon more accurately consist of a functional
6 improvement?

7 A It does not change the way the firearm
8 functions in terms of feeding and firing and capacity.

9 Q So reducing the amount of muzzle flip
10 doesn't improve the way the firearm functions for the
11 shooter?

12 A The mechanical process of the function is
13 the same. The muzzle flip improves the shootability
14 and the safety for the shooter. Again, if you want to
15 re-define "function," we can look at these of those.

16 Q So when you refer there to "old-fashioned
17 looking commercial semi-auto rifles," are you referring
18 to rifles that are chambered for an intermediate
19 cartridge?

20 A In some cases, but not always.

21 Q Are you referring there to rifles that are

1 capable of accuracy in ranges of more than a quarter
2 mile?

3 A In some cases, yes.

4 Q But not all?

5 A Usually that range or further.

6 Q The old-fashioned commercial semi-auto
7 rifles?

8 A Yes, sir.

9 Q All of them were capable of firing more
10 than a quarter mile?

11 A No, I think I said "usually."

12 Q Some of them were, and some of them
13 weren't; isn't that right?

14 A The question you're asking about is the
15 effective range?

16 Q Yes.

17 A It's going to be more a product of the
18 cartridge than the rifle. The rounds that are used in
19 AR and AK rifles are fairly low in terms of power and
20 range compared to the entire spectrum of center-fire
21 cartridges that are used in center-fire rifles.

1 Q Those types of rounds weren't available to
2 the more old-fashioned semi-automatic rifles, were
3 they?

4 A Does it say "old-fashioned looking"?

5 Q It does say "old-fashioned looking," yeah.

6 A Yeah, that would be a traditional wood
7 stock as opposed to a plastic stock.

8 Does that make sense?

9 Q Is that the comparison you're interested
10 in, whether the wood stock is old-fashioned?

11 A The comparison I'm making is between rifles
12 that incorporate those bullet points, and those that
13 don't.

14 Q So --

15 A Or don't include all of them.

16 Q I'm afraid we've lost each other. I'm just
17 trying to get this back on track. The stock has no --
18 the finish on the stock is no functional quality,
19 right?

20 A In terms of allowing the firearm to
21 mechanically function, in most cases, the design of the

1 stock will not affect that. We're not talking finish
2 of the stock, we're talking the design of the stock.

3 Q So what you're saying here is that weapons
4 that have these improvements are functionally identical
5 to other old-fashioned looking commercial rifles that
6 have wood stocks?

7 MR. SWEENEY: Objection.

8 BY MR. KLEIN:

9 Q That's your definition of "old-fashioned
10 looking rifle"?

11 A "Old-fashioned looking rifle" is a term I'm
12 using to refer to semi-automatic rifles that don't
13 include all of these bullet points that are listed.

14 Q Let's turn to page 18. In the chart on
15 page 18, you list an AR type and an AK type.

16 A Yes, sir.

17 Q And you have "Muzzle energy range" as one
18 of the pieces of information about those two types of
19 weapons.

20 A Yes, sir.

21 Q Those muzzle energy ranges apply whether

1 the gun is fired automatically or semi-automatically,
2 right?

3 A Yes, sir. A number of those cartridges are
4 not produced in either semi-automatic or full-automatic
5 as a general rule. Several of those will be primarily
6 in other types of firearms.

7 Q Which types of cartridges is that you're
8 referring to?

9 A The .38 Special, the .357 Magnum, the .44
10 Magnum. Those would all be primarily revolver
11 cartridges. The .30-06 and 8-millimeter Mauser, those
12 are offered in a semi-automatic configuration, but
13 they're probably slightly more prevalent in bold action
14 configuration.

15 Q So I appreciate that, but just so the
16 record is clear, I was asking only about the rows
17 concerning the AR type and AK type.

18 A I'm sorry.

19 Q In those cases, the ammunition is available
20 to be fired both automatically and semi-automatically,
21 correct?

1 A It is a function of the gun and not the
2 ammunition. So in a full-auto gun, those will fire
3 full-auto.

4 Q And then a semi-automatic gun will fire
5 semi-automatically, correct?

6 A One shot with one pull of a trigger, yes,
7 sir.

8 Q The muzzle energy ranges described there
9 would apply whether the gun and the projectile are
10 fired automatically or semi-automatically?

11 A Yes, sir.

12 Q I want to just turn your attention to the
13 same chart, the rimfire handgun and rifle example is
14 .22 LR.

15 What does that mean?

16 A Stands for .22 long rifle.

17 Q And that's a rimfire round; is that right?

18 A Yes, sir.

19 Q And it says there that, "The common uses of
20 that round are for plinking, small game, and practice."

21 Correct?

1 MR. SWEENEY: Objection.

2 THE WITNESS: And target.

3 BY MR. KLEIN:

4 Q Did I miss -- sorry. I missed that. And
5 that round is a relatively low power, correct?

6 A Yes, sir.

7 Q Be harder to use that to stop an enemy than
8 the .223 cartridge, for example, right?

9 A That gun would very seldom be first choice
10 for a defense, police, or military application.

11 Q Turn to page 20.

12 A Okay.

13 Q You have a statement there after the letter
14 C, "The guns restricted by this law have features that
15 may make them easier and safer to use by small statured
16 individuals, including some women of ethnic groups, the
17 elderly, and disabled individuals?"

18 What size women are you talking about
19 there?

20 A Any individual that is smaller stature than
21 average.

1 Q Are there men as small as the woman you're
2 referring to?

3 A Yes, there are.

4 Q Which ethnic groups are you talking about
5 there?

6 A I think many Asian ethnic groups tend to be
7 smaller statured than other ethnic groups. Again,
8 there are certainly folks that are smaller stature than
9 some Asians.

10 Q And aren't there white men that are also
11 that same stature?

12 A I think that's what I just said.

13 Q Are you saying here that white men
14 typically don't need those features?

15 A Nope. That's not what it says.

16 Q Isn't it true that small statured
17 individuals might also choose a handgun, including a
18 semi-automatic handgun, correct?

19 MR. SWEENEY: Objection.

20 THE WITNESS: I don't know that stature has
21 a great deal of impact on handgun choice, other than

1 with very, very powerful hunting firearms. And
2 generally, folks of any stature can learn to shoot most
3 firearms effectively. It's just that certain
4 configurations are easier for people to shoot a gun
5 that the stock matches the individual's body type can
6 make a significant difference on their ability to use
7 it effectively and safely.

8 BY MR. KLEIN:

9 Q After letter E, there is a sentence, "When
10 consumers are restricted to a magazine capacity of ten
11 rounds are less, they are more likely to choose a
12 compact firearm, which is more difficult to effectively
13 fire accurately than a full size pistol."

14 What's your basis for that statement?

15 A Experience and observation and discussion
16 with a wide, wide range of firearms experts. That's
17 pretty a universally known fact.

18 Q This is a scientific study that you've run
19 on this question?

20 A No, it's common observation. It's hard to
21 debate. And you can find references to it throughout

1 the literature, throughout the Internet, that a very
2 small compact pistol will be more difficult to shoot
3 effectively than a full size pistol.

4 Q That's not what your statement here says.
5 What you're saying here is that when consumers are
6 restricted to a magazine capacity of ten rounds or
7 less, they are more likely to choose a compact firearm.

8 What's your basis for that statement?

9 A Again, observation and experience. I see a
10 lot of guys buy guns.

11 Q And so if they can't get a large magazine,
12 they choose a smaller firearm?

13 A Yes. In some cases, they will. It's an
14 incentive to purchase a more compact concealable
15 firearm for personal defense. You've given up one of
16 the positive features of a firearm, a magazine capacity
17 in excess of ten rounds. So a lot of times, a
18 purchaser will compensate by going with a smaller, less
19 controllable handgun.

20 Q Why wouldn't they compensate with going
21 with a bigger, more dangerous looking handgun?

1 MR. SWEENEY: Objection.

2 THE WITNESS: Usually -- this is primarily
3 talking about people looking at firearms for personal
4 defense, which is a very large part of the handgun
5 market. It's a weighing of factors there when someone
6 makes that decision. If somebody can have a handgun
7 that has a standard capacity of 14 rounds, let's say,
8 in the magazine, they may like having those extra
9 rounds available. If they're limited to ten rounds,
10 and there is a smaller version of the gun, they may
11 make the choice that I prefer something that is more
12 concealable over something that is full size.

13 BY MR. KLEIN:

14 Q And that concealability might also be an
15 advantage in some circumstances for self-protection,
16 right?

17 A It's definitely an advantage in some
18 circumstances. It's a disadvantage in terms of
19 accuracy in fire.

20 Q It's possible to get a ten-round magazine
21 or smaller for a full size pistol, right?

1 A Yes, it is.

2 Q Turn to page 22, please. You reference the
3 NSSF Firearms Retailer Survey Report, 2013 and 2017
4 Editions.

5 A Yes, sir.

6 Q Can you tell me what "NSSF" stands for?

7 A I hope I can remember. I think it's the --
8 I'm not sure if I know the acronym. It's an
9 organization for firearms dealers. I think it's like
10 the National Sport and Shooting Foundation, something
11 along those lines.

12 Q National Shooting Sports Foundation sound
13 right?

14 A I like that even better. Yes, sir.

15 Q Do you know what kind of organization NSSF
16 is?

17 A I believe it's a professional organization
18 for firearms dealers or possibly firearms
19 manufacturers, I'm not sure.

20 Q Dealers and manufacturers, is that
21 possible?

1 A I think that would be very possible, yes,
2 sir.

3 Q And did you look into the methodology
4 behind the survey report before you quoted it?

5 A If I recall properly, I think it was a
6 survey of firearms dealers.

7 Q Is it fair to say that NSSF is a trade
8 group for those dealers?

9 A I think that's probably a fair
10 representation.

11 Q Is it fair to say that the dealers have an
12 interest in selling more guns?

13 A I assume that's why they're dealers.

14 Q Is it fair to say that if they have a trade
15 group that the trade group is likely to be interested
16 in helping them to sell more guns?

17 A Yes, sir.

18 Q Have you ever studied mass shootings?

19 A No, I really haven't. I've just seen what
20 everybody sees in the press and seen accounts.

21 Q Are you familiar with the types of guns

1 that have been used in mass shootings over the last ten
2 years?

3 A I've seen references to them in different
4 places.

5 Q But you don't study that particular
6 question?

7 A I've reviewed it, but I don't have
8 immediate finger tip in-depth knowledge, no, sir.

9 Q So you have a sentence on page 23 of your
10 report, about halfway down, "Clearly the types of guns
11 and magazines banned are exactly the type commonly used
12 by responsible individuals for lawful purposes such as
13 self-defense."

14 A Yes, sir.

15 Q If you haven't studied mass shootings,
16 would you have any reason to disagree if someone said,
17 "Clearly the types of guns and magazines banned are
18 exactly the type most commonly used by criminals for
19 mass shootings"?

20 MR. SWEENEY: Objection.

21 THE WITNESS: I'd have to know what was

1 meant by "mass shootings."

2 BY MR. KLEIN:

3 Q Typically, the definition is the shooting
4 of a criminal nature in which four or more people are
5 killed or injured.

6 Is that a fair definition?

7 MR. SWEENEY: Objection.

8 THE WITNESS: I've seen that definition
9 used.

10 BY MR. KLEIN:

11 Q So in that context, would it be accurate
12 for someone to say, "Clearly the types of guns and
13 magazines banned are exactly the types commonly used by
14 criminals in mass shootings"?

15 MR. SWEENEY: Objection.

16 THE WITNESS: I'd really to have to see the
17 statistics on it.

18 BY MR. KLEIN:

19 Q If the statistics supported that, would you
20 say that maybe these guns are used both by responsible
21 individuals and by criminals?

1 MR. SWEENEY: Objection.

2 THE WITNESS: I have no doubt that there
3 are any number of firearms that are used both by
4 responsible individuals and criminals, including the
5 type we're discussing.

6 BY MR. KLEIN:

7 Q Are you familiar with the mass shooting in
8 a movie theater in Aurora, Colorado?

9 A Generally. Not in specificity.

10 Q You don't know what type of gun was used?

11 A I think there was -- I'm trying to
12 remember. I may be wrong. I think initially a shotgun
13 was used. And then I believe it might have been an AR
14 type of rifle with an unusual after-market magazine.

15 Q Underground magazine?

16 A After-market magazine.

17 Q Do you remember it be a 100-round magazine?

18 A 100-round?

19 Q Yes.

20 A That wouldn't surprise me.

21 Q Do you know if the gun was fired

1 automatically or semi-automatically?

2 MR. SWEENEY: Objection.

3 THE WITNESS: I don't know. My assumption
4 is that it was semi-automatically.

5 BY MR. KLEIN:

6 Q Are you familiar with a mass shooting in
7 Edgewater Technology in Wakefield, Massachusetts?

8 A No.

9 Q Do you know what type of gun was used?

10 A I'm not familiar with that shooting.

11 Q Are you familiar with a shooting at
12 Columbine High School?

13 A Yes.

14 Q Do you know what type of gun was used?

15 A Again, I'm very, very fuzzy on the details.
16 Again, I think the shooter started with shotguns, and
17 then they may have gone to either handguns or AR-type
18 rifles, but I'm not at all sure on that.

19 Q Does TEC-9 ring a bell?

20 A TEC-9, yeah. That -- I would find that
21 credible.

1 Q Do you know if the gun was fired
2 semi-automatically?

3 A I'm pretty sure we would have heard if it
4 was a full-auto firearm.

5 Q Do you know about a shooting in San
6 Bernardino, California?

7 A It rings a bell, but I don't remember
8 specifics.

9 Q Do you happen to remember that two AR-15
10 type guns were used?

11 A I don't. I'm sorry.

12 Q Are you familiar with the shooting in
13 Newtown, Connecticut.

14 A Yes.

15 Q That's the one where 20 children and six
16 adults were killed?

17 A Yes.

18 Q Do you know what type of gun was used
19 there?

20 A Not off the top of my head.

21 Q Is it possible that it was a Bushmaster

1 XM-15?

2 A Which would be an AR-type rifle, that's
3 certainly possible.

4 Q Do you know whether it was shot
5 semi-automatically?

6 A I would assume it was shot
7 semi-automatically. Because, again, I think any time a
8 full-auto gun was used, it would be fairly prominent in
9 the press.

10 Q Are you familiar with the shooting at the
11 Pulse Nightclub in Orlando, Florida?

12 A Yes.

13 Q Do you know how many people were killed
14 there?

15 A I don't.

16 Q Do you know what kind of weapon was used
17 there?

18 A I don't.

19 Q If I told you it was a Sig Saur AR-15 type
20 weapon, would that ring a bell?

21 MR. SWEENEY: Objection.

1 THE WITNESS: I'm not sure that it does.

2 BY MR. KLEIN:

3 Q You don't know whether a weapon that would
4 be banned in Massachusetts was used there?

5 A I don't know. I don't know what gun was
6 used, so I wouldn't know if it was banned in
7 Massachusetts.

8 Q We talked about Las Vegas. Those were not
9 select fire automatic guns used in Las Vegas, were
10 they?

11 MR. SWEENEY: Objection.

12 THE WITNESS: The reports that have been
13 made public so far don't indicate that they were. They
14 indicate that they were semi-automatics.

15 BY MR. KLEIN:

16 Q On page 24 of your report, you've quoted,
17 "The Similarity tests in part..." below heading number
18 eight. Is it fair to say you left some words out
19 there?

20 A That's why the ellipses are there, yes.

21 Q Do you know what words you left out?

1 A No, but I'm sure we could find them.

2 Q On page 25, you say:

3 "The Interchangeability Test attempts to
4 provide a complicated formula to define whether a gun's
5 receiver is 'the same as or interchangeable with the
6 receiver as an Enumerated weapon.'"

7 A Yes.

8 Q The term "complicated" is your term, right?

9 MR. SWEENEY: Objection.

10 THE WITNESS: That's my opinion.

11 BY MR. KLEIN:

12 Q Would it be complicated to see if parts are
13 interchangeable between two guns?

14 A Yes, it would.

15 Q You wouldn't be able to just move from one
16 gun to another and test it?

17 A As I understand the law, you would have to
18 test the part on all of the enumerated guns to see if
19 it was interchangeable. And that presumes a fairly --
20 first of all, it presumes having specimens to compare
21 them to, and then it presumes a fairly sophisticated

1 set of gunsmithing skills that are certainly beyond my
2 capability.

3 Q Would a magazine for an AR-15 fit an AK-47?

4 A No, it would not.

5 Q Different size, right?

6 A Yes, sir.

7 Q You know that confidently?

8 You wouldn't have to test that, would you?

9 A No, I wouldn't have to test that.

10 Q Would a trigger from an AR-15 fit an AK-47?

11 A The trigger itself?

12 Q The trigger mechanism --

13 A The whole group?

14 Q Yes, the trigger group.

15 A It would not fit. There are parts of it
16 that might be interchangeable.

17 Q But you wouldn't have to change the trigger
18 mechanism because you know it wouldn't fit, right? The
19 group of parts that we're talking about here.

20 A As I read this definition, I didn't see
21 anywhere that it referred to a group of parts. I think

1 the word is "components." I could be wrong.

2 Q Okay. Thank you. Show you an Exhibit
3 labeled 8.

4 (Exhibit No. 8 was marked for
5 identification.)

6 BY MR. KLEIN:

7 Q Says at the top, "The Nazis' assault rifle
8 now made in America."

9 A Yes.

10 Q Then there is a quote from you at the
11 bottom of the page. Does that seem like an accurate
12 quote to you?

13 A Yes, it does.

14 Q And is it true that the rifle made in
15 America that they're describing here is a
16 semi-automatic weapon?

17 A I'm just sure that it is.

18 Q Thank you.

19 (Exhibit No. 9 was marked for
20 identification.)

21 ///

1 BY MR. KLEIN:

2 Q Giving you something labeled Exhibit
3 Number 9. Is that something you're familiar with?

4 A Yes. That appears to be an article, a
5 chapter that I originally produced for a book. And
6 other versions of it have been are reproduced in other
7 books. I'm going to assume that this was the original
8 from the book named "Guns."

9 Q And you wrote this?

10 A I wrote this part of it, yes, sir.

11 Q This article?

12 A If that's what this book came from, yes,
13 sir.

14 Q Do you know approximately when you wrote
15 it?

16 A I don't remember. It's probably on my
17 curriculum vitae.

18 Q Why don't we take a look at that.

19 A Okay.

20 Q Looks like page 29.

21 A Thank you.

1 Q Can you point it out to me, if you see it.

2 A Oh, okay.

3 Q Could be on page 23 as well.

4 A Probably. It's probably on books on
5 page 28, and it would be the one at the bottom. Guns
6 Introduction by Jim Supica, 2005.

7 Q And this was intended as your summary of
8 the history of gun development at that time?

9 A Yes, for that book.

10 Q As far as you know, is this all accurate?

11 A You know, I haven't looked through this
12 copy of it. Do you know if this was the one taken from
13 the museum's website, the article that's reproduced
14 there?

15 Q Yes. I will represent to you that I took
16 this directly from the museum's website.

17 A Yeah. The article posted on the website
18 may not be completely identical to the one in Guns, but
19 it's substantially the same. And I did review and
20 write that article on the website.

21 Q So you're comfortable with everything in

1 here?

2 A I think so.

3 Q And we can take this as accurate in
4 connection with this case?

5 A A keyword in the title of this article is
6 "a brief history of firearms." So this is by no means
7 comprehensive. But you can take this as my summary of
8 some of the high points in the history of firearms.

9 Q Would you describe your history of firearms
10 in your expert report as also a brief summary?

11 A Yes. It tends to focus more specifically
12 on issues that are related to firearms capacity, rate
13 of fire, and use of detachable magazines. It's also a
14 summary.

15 Q So if there is something in this article
16 that is not in your expert report, we can sort of
17 supplement the expert report by treating this
18 information as equally accurate?

19 MR. SWEENEY: Objection.

20 THE WITNESS: Those are not identical
21 reports.

1 BY MR. KLEIN:

2 Q I understand that.

3 A Yeah. I'd have to see what you're wanting
4 to substitute to see if that fits.

5 Q Okay. So let's look at the description of
6 flintlocks on page 2 and 3.

7 A Okay.

8 Q Is it accurate?

9 A We're starting at the top of page 3?

10 Q Starting at bottom of page 2, where it
11 says, "flintlocks." You can read it to yourself. You
12 don't need to read it out loud.

13 A Thanks.

14 MR. SWEENEY: You're asking him to look at
15 the whole section --

16 MR. KLEIN: Uh-huh.

17 THE WITNESS: And the question is: Is this
18 accurate?

19 MR. KLEIN: Uh-huh.

20 THE WITNESS: Thanks. Yes, I believe
21 that's accurate.

1 BY MR. KLEIN:

2 Q Is there any reason why we can't rely on
3 the accuracy of your statements in here in connection
4 with this case?

5 A I'm not aware of anything in this article
6 that I would differ with at this time. I would want to
7 review it thoroughly, but I think it's still pretty
8 accurate.

9 Q Why don't we take a break. I'll let you
10 read through it. And then you can tell me after the
11 break whether there is anything in here that we
12 shouldn't rely on.

13 A Okay.

14 (A brief recess was taken.)

15 BY MR. KLEIN:

16 Q I want the record to reflect that you just
17 spent 10 to 15 minutes reading through the article that
18 we've marked Exhibit Number 9.

19 Is it, to the best of your knowledge,
20 accurate to the history of guns?

21 A Yes. I think it holds up well. I read

1 through it very quickly, but if there is specific parts
2 that you'd like me to look at harder, I'd be glad to do
3 that.

4 Q But as far as you know, everything is still
5 true, right?

6 A I think it holds up well, yes.

7 Q The history hasn't changed?

8 A No.

9 Q Where you used a date, for example, that
10 would be your best effort to come up with an accurate
11 date?

12 A I could have made an error in this. So if
13 there is a specific date you're concerned about, I'd
14 like to look at it and see if I'm aware of anything
15 that's been different.

16 Q As far as you know, you applied your best
17 efforts to identifying correct dates, right?

18 A I did.

19 Q Turn back to Exhibit Number 3, which is the
20 deposition transcript of the Kolbe versus O'Malley
21 case.

1 A Okay.

2 Q If you could turn to page 30.

3 A Okay.

4 Q Starting on line 17, you say:

5 "I know that generally whenever there is a
6 prospect of some type of gun being restricted, it tends
7 to promote a glut and drive prices up for guns that are
8 expected to be restricted as to being able to buy them
9 in the future. So it probably would have been
10 something along those lines."

11 I think we already talked about this a
12 little bit. The glut is something that's likely to be
13 restricted. It's still a phenomenon in the United
14 States, right?

15 A Yes, sir.

16 Q So, in your view, does that mean that for
17 restrictions to be effective, and meaningfully restrict
18 the sale of an item, that it can't be announced too far
19 in advance?

20 MR. SWEENEY: Objection.

21 THE WITNESS: I don't want to imply that

1 restriction of the type of guns we're talking about
2 would be effective or desirable. As to whether or not
3 a restriction on anything works, if you don't want the
4 people buying them in advance, probably the shortest
5 lead time would be the most effective in restricting
6 ownership of that item.

7 BY MR. KLEIN:

8 Q And could you turn to page 32, please.

9 A Okay.

10 Q You are describing there a book or a set of
11 books called Rifles, Shotguns and Guns?

12 A And handguns.

13 Q And handguns, right.

14 A Yes, sir.

15 Q Starting on line 9, you say:

16 "The editor and publisher of this compiled
17 information on various firearms from manufacturers
18 along with pictures. So basically most of the interior
19 of this book is from firearms manufacturers."

20 A That's correct.

21 Q These are books that your name is on as

1 author, right?

2 A Or co-author, yes.

3 Q Is it fair to say that you consider the
4 manufacturer to be a good source of information about
5 guns?

6 A I didn't have a say on the content of
7 these. The publisher asked us to create the
8 introduction to them. And then they provided the
9 publisher with the information that he requested, which
10 was the pictures, descriptions, and technical
11 specification of guns that were available on the
12 market. I think in most cases in those books, the
13 manufacturers probably represented their products
14 accurately, and in the terms that they wanted to market
15 them as.

16 Q So, in general, the material that was taken
17 from manufacturers, you think is likely to be accurate?

18 MR. SWEENEY: Objection.

19 THE WITNESS: I think it's likely -- I
20 think the technical specifications are likely to be
21 accurate. And I think the text is likely to be

1 designed in part to promote that particular product.

2 BY MR. KLEIN:

3 Q Would it be fair to rely on a
4 manufacturer's representation of the type of gun that
5 they're selling?

6 MR. SWEENEY: Objection.

7 THE WITNESS: It would depend on how
8 they're representing it.

9 BY MR. KLEIN:

10 Q Would it be fair to rely on their
11 descriptions of guns?

12 MR. SWEENEY: Objection.

13 THE WITNESS: On their technical
14 description of guns, I think they will get the caliber
15 and the type of action and other technical aspects of
16 the gun correct.

17 BY MR. KLEIN:

18 Q Including the platform on which it's made?

19 A I don't know that manufacturers always list
20 that.

21 Q But if they do, you would expect them to be

1 listing it accurately?

2 A In terms of if it's based on another model?

3 Q Yes.

4 A Yes, I would expect them -- I would. If
5 they represented in those terms, I would expect it to
6 be an accurate representation.

7 Q Would they correctly identify the operating
8 system for the gun?

9 A Operating system, meaning?

10 Q Whether it's direct impingement, gas
11 piston, for example, in an AR-type weapon?

12 A I think they would, yes, sir.

13 Q Would they correctly represent which parts
14 can be swapped out for other parts made by other
15 manufacturers if they made that representation?

16 A I don't often see that in a manufacturer's
17 product descriptions. But if they did make that
18 representation, I would expect it to be accurate.

19 Q Is it fair to say as a general manner --
20 strike that.

21 Is it fair to say generally that

1 manufacturers probably know as much or more about their
2 own guns than anyone else?

3 A In terms of current production of the
4 firearms, they're going to be very knowledgeable on it.
5 A lot of times, firearms manufacturers don't have a
6 good grasp of firearms history.

7 Q If you asked a question of a manufacturer
8 about their gun, the gun that they produced, would you
9 expect to get accurate information?

10 MR. SWEENEY: Objection.

11 THE WITNESS: It would depend on what the
12 question was and who you asked with the manufacturer.

13 BY MR. KLEIN:

14 Q If you asked for information about
15 technical specifications for the gun, would you expect
16 to get an accurate answer?

17 A If you reached the right person in the
18 organization, I would.

19 Q If they published something about their
20 gun, you would expect them to publish accurate
21 information?

1 MR. SWEENEY: Objection.

2 THE WITNESS: In terms of the technical
3 specifications of the gun, I would think it's to their
4 great advantage to publish accurate information.

5 BY MR. KLEIN:

6 Q Turn to page 37.

7 A Okay.

8 Q You're describing here your work at the NRA
9 National Firearms Museum.

10 A Okay.

11 Q Is that right?

12 A Yes, it looks like it.

13 Q And then it says at the bottom, "We also
14 are involved in a number of educational efforts through
15 various media."

16 A Yes, sir.

17 Q "Through Facebook, the Internet, we have a
18 website, YouTube."

19 And then the next page, it says, "We have a
20 YouTube channel trying to present educational
21 information on firearms."

1 Is that all accurately read?

2 A Yes, it is.

3 Q When you use the term "we" at the beginning
4 of the paragraph, do you mean the NRA?

5 A I mean the museum staff, the NRA museum
6 staff. Let me go back and double check that, but I
7 think that's the context. Yeah, no. That's
8 specifically the NRA Museums Division.

9 Q You have all these different media outlets
10 for the museum?

11 A Yes, sir.

12 Q The information that you put forward on
13 those outlets, is that consistent with the views of the
14 NRA?

15 A They're -- it's the historical information
16 from the museum. It's -- the views of the NRA in terms
17 of legislative and political opinion are not involved
18 with any of our work.

19 Q Are any of the materials that you published
20 reviewed first by someone outside the museum staff?

21 A Generally not. In some cases, some social

1 media postings might be. But in the vast majority of
2 cases, not.

3 Q Who would review the social media postings?

4 A The NRA media staff might review it.
5 Again, that's very rare. Generally, it's more a case
6 of the museum staff developing historical content on
7 firearms that the NRA General Operations Division might
8 use on some of their social media as a presentation of
9 firearms history.

10 Q Turn to page 51.

11 A Okay.

12 Q Starting on line 10, your answer includes,
13 "I mean, there are a lot of straight up AR-15 clones
14 that are pretty much interchangeable."

15 Should I read that again because I messed
16 up?

17 A No, I understood it.

18 Q That's still your view, right?

19 MR. SWEENEY: Objection.

20 THE WITNESS: Yes, I think so.

21 ///

1 BY MR. KLEIN:

2 Q You identified in the Kolbe case about a
3 gun called the SKS; is that right?

4 A You'd have to refer to me where that is.

5 Q 72 to 73.

6 A Yes.

7 Q So is it the case that the SKS was a
8 semi-automatic gun?

9 A Yes, it is.

10 Q And you state here:

11 "The SKS was borrowing some of the assault
12 rifle concepts, in that it was a semi-automatic and
13 that it did use an intermediate power cartridge."

14 That's accurate, right?

15 A It's not accurate that being semi-automatic
16 is an assault rifle concept. I misspoke there.

17 Q Select fire guns also have some automatic
18 capacity, right?

19 A Many of them do. Select fire -- yes.
20 Select fire would generally have a semi-automatic
21 capacity. The SKS had no full-automatic capacity. It

1 was semi-automatic only.

2 Q The SKS was a predecessor to the AK?

3 A By a very short period of time. They were
4 produced contemporaneously for a while for the Soviet
5 Union and then for some of their allies, including
6 companies that set up production on their own. I
7 believe it was preferred by China as a military rifle
8 for a significant period of time after true assault
9 rifles were available.

10 Q And again, when you use the term "true
11 assault rifle," that's your definition of assault
12 rifle, right?

13 A That's the historic definition of an
14 assault rifle, yes, sir.

15 Q Which has also been applied to some
16 semi-automatic guns that we discussed, right?

17 MR. SWEENEY: Objection.

18 BY MR. KLEIN:

19 Q Including by manufacturers?

20 A Yes. And accurately applied, yes, sir.

21 Q On page 86, starting on line 12.

1 A Line 12. Yes, sir.

2 Q "We discussed earlier that the designation
3 of the rifle was changed by the military from AR-15,
4 which had been assigned to it by ArmaLite to M16."

5 Is that accurate?

6 A I believe that's accurate, yes, sir.

7 Q "And then at a later point in time, Colt
8 picked up the AR-15 designation for their
9 semi-automatic sporting version of the rifle."

10 Is that also accurate?

11 A I believe it is.

12 Q And the term "sporting version," that's a
13 marketing term that was adopted in the context of
14 identifying this AR-15, right?

15 A It's a descriptive term for the use of the
16 rifle. I believe model name was Sporter,
17 S-p-o-r-t-e-r.

18 Q But it had uses other than sporting,
19 correct?

20 A It was marketed as a sporting rifle.

21 Q But it could have been also used for a

1 variety of other purposes, correct?

2 A It could have been used as a doorstop, yes,
3 sir.

4 Q It could have been used even, for example,
5 in the context of an assault, correct?

6 A What sort of an assault, please?

7 Q An assault with combat troops who were
8 directed to fire semi-automatically, right?

9 MR. SWEENEY: Objection.

10 THE WITNESS: Generally, in modern
11 militaries, a semi-automatic sporting rifle would not
12 be issued to combat troops.

13 BY MR. KLEIN:

14 Q But if they had been, they could use it
15 semi-automatically the same way the Army now directs
16 its troops semi-automatically as a preference over
17 automatic fire?

18 MR. SWEENEY: Objection.

19 THE WITNESS: I don't think there is any
20 accurate historical precedent for that. I don't think
21 they have been issued, other than in possibly

1 specialized roles.

2 BY MR. KLEIN:

3 Q And you're aware that some law enforcement
4 agencies use semi-automatic versions of the AR-15?

5 A Yes, sir.

6 Q And they use them, for example, in the
7 connection with SWAT team activities?

8 A Yes, sir.

9 Q Some of those SWAT team activities might be
10 assaults, right?

11 MR. SWEENEY: Objection.

12 THE WITNESS: I'm not sure how you're using
13 that term. It's more of police terminology than
14 historical terminology. It sounds accurate, but I'm
15 not sure what it means in that context.

16 BY MR. KLEIN:

17 Q Sounds accurate, meaning that SWAT teams
18 might use semi-automatic AR-15s to, for example, storm
19 a compound where hostages are held?

20 MR. SWEENEY: Objection.

21 THE WITNESS: I don't know what all the

1 police uses of the AR-15s are.

2 BY MR. KLEIN:

3 Q It's possible they're used by police to
4 storm a compound where hostages are held, isn't it?

5 MR. SWEENEY: Objection.

6 THE WITNESS: I don't know how often that
7 happens. If that does happen, it would make sense that
8 that might be one of the firearms they would use or
9 variations of it. It's fairly popular as a police long
10 gun.

11 BY MR. KLEIN:

12 Q If you turn to page 118, please.

13 A Okay.

14 Q Starting on line 20, it says:

15 "The fact that a gun can fire a bullet with
16 any degree of accuracy is equal to either a bad guy or
17 a good guy."

18 Do you see that?

19 A Yes, sir.

20 Q And that's an accurate quote from the
21 deposition?

1 A Yes, that would be true of any
2 characteristics of a gun's function.

3 Q Then it says:

4 "The fact that guns function reliably, uses
5 effective ammunition, can be aimed and hit what it's
6 aimed at, it's morally neutral."

7 Right?

8 A Yes, sir.

9 Q And that's an accurate quote?

10 A Yes, sir.

11 Q And then it says:

12 "The gun doesn't know if it's a good guy or
13 a bad guy?."

14 Right?

15 A Yes.

16 Q That's also an accurate quote?

17 A It is.

18 Q And then it says:

19 "That's the truth for any improvement in
20 firearms design. It's not a moral improvement, it's an
21 improvement in the intended function of the firearms."

1 A Yes, sir.

2 Q Is that quote accurate?

3 A Yes, sir.

4 Q It's also true that a bad guy might train
5 for a given criminal situation more than a civilian
6 anticipating the need for a gun in self-defense?

7 MR. SWEENEY: Objection.

8 THE WITNESS: I have no knowledge as to
9 that. It has probably happened on occasion, but I'm
10 guessing it's fairly rare. That's just a guess.
11 That's not an informed opinion.

12 BY MR. KLEIN:

13 Q If someone intends to commit a crime, they
14 would typically plan for that crime, right?

15 MR. SWEENEY: Objection.

16 THE WITNESS: I don't know. I think there
17 are a lot spontaneous crimes, and I don't know if
18 planning would include the discipline to practice
19 that's necessary to become really proficient with a
20 firearm. I suppose that it's happened in some cases.
21 It's a guess.

1 BY MR. KLEIN:

2 Q Let's go back to page 108, please.

3 A Okay.

4 Q Starting on line 1, you say:

5 "A criminal who enters a situation with an
6 intent to do maximum damages, cause maximum fatalities,
7 and who is trained and is going into this with the
8 mindset that that is what they're going to do with
9 their ammunition prepared, I think they would be faster
10 than someone who is taken unaware."

11 Are you talking there about magazine
12 changes, right?

13 A I don't know. Let me look on the previous
14 page.

15 Q Please.

16 A Okay. What was the question, please?

17 Q You're talking there about magazine
18 changes, right?

19 A The part I reviewed, it looks like we are
20 talking about firearms training and practice in
21 general. Is there a section that specifies magazine

1 changes?

2 Q I think if you go to page 106, it's clear
3 that you're discussing how long it takes to change a
4 magazine. I don't want to trick you. It's just, I'm
5 happy to go back and --

6 A Yeah. Let's see what we're talking about.
7 Where would we start there?

8 Q Line 9.

9 A That string of questions appears to begin
10 with a question about training for magazine change
11 practice. I think by here, it seems to spread towards
12 training and practice in general. But we can say that
13 practicing magazine change could be part of that
14 training and practice.

15 Q And practicing with a gun generally is also
16 something that some criminals might engage in, right?

17 MR. SWEENEY: Objection.

18 THE WITNESS: I think it's possible.

19 BY MR. KLEIN:

20 Q And you are aware, based on this testimony,
21 that there are criminals who enter situations with an

1 intent to do maximum damages and cause maximum
2 fatalities?

3 MR. SWEENEY: Objection.

4 THE WITNESS: Say it again, please.

5 BY MR. KLEIN:

6 Q Your are aware that there are some
7 criminals who enter a situation with an intent to do
8 maximum damages and cause maximum fatalities, right?

9 MR. SWEENEY: Objection.

10 THE WITNESS: It appears that's the case in
11 some pretty specific criminal activities.

12 BY MR. KLEIN:

13 Q Like the mass shootings we talked about
14 earlier?

15 MR. SWEENEY: Objection.

16 THE WITNESS: I would say that is probably
17 part of the intention that at least some of those
18 shooters had.

19 BY MR. KLEIN:

20 Q And so it's fair to say that in some of
21 those situations, the mass shooter had done some

1 planning and thought about how to maximize the damage
2 they were causing?

3 MR. SWEENEY: Objection.

4 THE WITNESS: I don't know what they were
5 thinking.

6 BY MR. KLEIN:

7 Q That's the goal of the mass shooter in
8 those contexts, to shoot as many people as possible,
9 right?

10 MR. SWEENEY: Objection.

11 THE WITNESS: I don't know what the goal
12 is.

13 BY MR. KLEIN:

14 Q You don't know what the goal was when
15 Stephen Paddock opened fire in Las Vegas?

16 MR. SWEENEY: Objection.

17 THE WITNESS: I don't think anybody does at
18 this point.

19 BY MR. KLEIN:

20 Q So you wouldn't, based on what you know
21 about that act, assume that he was trying to cause

1 maximum fatalities and did everything possible to do
2 so?

3 MR. SWEENEY: Objection.

4 THE WITNESS: It certainly looks like that
5 was his intention. Again, that case is very much in
6 the early stages of investigation. I have no special
7 insight into that.

8 BY MR. KLEIN:

9 Q Based on the media reports, it looks like
10 he did a substantial amount of planning, correct?

11 MR. SWEENEY: Objection.

12 THE WITNESS: A substantial amount of
13 planning?

14 BY MR. KLEIN:

15 Q Yes.

16 A Media reports indicate that.

17 Q I'd like you to review the testimony
18 starting on page 120, line 16, through page 122, line
19 8. If you can just read it to yourself, if you don't
20 mind.

21 A Starting on page 129?

1 Q No. Page 120, starting on line 17.

2 A And continuing through?

3 Q 122, line 8.

4 A I see that.

5 Q Is this testimony an accurate recording of
6 what happened during the deposition?

7 A I think there is one term that is mistaken.
8 I think it says "selected" on page 8 -- page 120,
9 line 18, and that should probably be "select fire."
10 And certainly, there are grammatical stumbles. But I
11 think generally, this is accurate.

12 Q If I asked you these same questions today,
13 you'd answer in more or less the same way?

14 A I think that I would with the exception
15 that the question of whether a firearm is dangerous and
16 unusual, was one of the specific points in this law
17 that was being reviewed. So the term "dangerous" or
18 unusual -- I'm sorry, the terms "dangerous" or
19 "unusual" in this case have a different significance
20 and different importance than they do in the case that
21 we're currently looking at.

1 Q But that's not really what your testimony
2 says. You're suggesting here that full-automatic fire
3 is dangerous, but semi-automatic fire, not so much,
4 right?

5 A That's very specifically what we're
6 addressing there. The term "dangerous" is used in that
7 particular law. That's why the term "dangerous" is
8 used in that answer.

9 Q But you are suggesting here -- and I can
10 ask you the question again -- that full-automatic fire
11 is dangerous in a way that semi-automatic fire is not,
12 correct?

13 MR. SWEENEY: Objection.

14 THE WITNESS: The text that you've asked me
15 to review includes a discussion of the term
16 "dangerous." We've discussed dangerous in this
17 deposition. Dangerous is an important term in the
18 deposition and the case that we're looking at here with
19 this Exhibit 3. And so the answers in this deposition
20 are going to be in the context of that case.

21 If you have a question in the context of

1 this case, I'd be glad to try and answer it.

2 BY MR. KLEIN:

3 Q Let's ignore the definition of dangerous in
4 the Maryland law. And let me ask you whether it's your
5 view that automatic fire is dangerous in a way that
6 semi-automatic fire is not?

7 MR. SWEENEY: Objection.

8 THE WITNESS: We have discussed "dangerous"
9 in some length during this deposition. Dangerous with
10 a firearm could easily mean, is the gun safe to fire?
11 And so if you can give me a more specific definition of
12 dangerous for your question, I'll be glad to try and
13 answer that.

14 BY MR. KLEIN:

15 Q Let's talk about mass shootings again. Is
16 the -- is a gun with semi-automatic capacity less
17 likely to kill people in a mass shooting situation than
18 a gun with automatic capacity?

19 MR. SWEENEY: Objection.

20 THE WITNESS: We're talking in the context
21 of a mass shootings?

1 BY MR. KLEIN:

2 Q Yes.

3 A Your question is: Is a semi-automatic less
4 likely to kill people than a full-automatic?

5 Q Yes.

6 MR. SWEENEY: Objection.

7 THE WITNESS: That would depend to an
8 extent in how the gun is used.

9 BY MR. KLEIN:

10 Q Is it fair to say there is certain
11 situations where you could kill more people if that's
12 your intent with a semi-automatic gun than an automatic
13 gun?

14 MR. SWEENEY: Objection.

15 THE WITNESS: I think you can come up with
16 situations where that would be true.

17 BY MR. KLEIN:

18 Q Let's turn to page 131, line 14.

19 A Okay.

20 Q Question: "And it was developed by
21 ArmaLite for military application."

1 And your answer is: "Again, I assume they
2 wanted as much of both markets as they could get."

3 Isn't it the case that any manufacturer
4 would want as much of both military and civilian
5 markets as they could get?

6 MR. SWEENEY: Objection.

7 THE WITNESS: I think it would depend on
8 the product they were developing.

9 BY MR. KLEIN:

10 Q Wouldn't they want to sell more guns?

11 MR. SWEENEY: Objection.

12 THE WITNESS: Specifically for firearms
13 manufacturers?

14 BY MR. KLEIN:

15 Q Yes.

16 A I would think that most firearms
17 manufacturers would want both the civilian and the
18 military markets. I don't know that there is -- that
19 that's universally true. There are firearms
20 manufacturers that have seemed to focus more on one
21 market or the other.

1 Q But if a gun could be sold in both markets,
2 they would want to sell it in both markets, wouldn't
3 they?

4 MR. SWEENEY: Objection.

5 THE WITNESS: They might.

6 BY MR. KLEIN:

7 Q They would want to make more money,
8 wouldn't they?

9 MR. SWEENEY: Objection.

10 THE WITNESS: I think there is situations
11 where a manufacturer could decide that they could make
12 more money by focusing on one market or the other. I
13 think often times, developments in firearms are applied
14 to both the military and civilian markets.

15 BY MR. KLEIN:

16 Q And in those situations, the manufacturer
17 also has an interest in keeping costs down, correct?

18 MR. SWEENEY: Objection.

19 THE WITNESS: I think the manufacturer is
20 going to balance a number of factors. It would be cost
21 of production, it would be quality of the end product,

1 any number of things go into to making manufacturing
2 decisions. I'm not a manufacturer. I don't know
3 everything that goes into that.

4 BY MR. KLEIN:

5 Q Wouldn't you assume, though, that the
6 process that a manufacturer would choose if it wanted
7 to sell a gun in both the military and civilian market
8 would be as close as possible to each other?

9 MR. SWEENEY: Objection.

10 THE WITNESS: I'm not sure I understand
11 that.

12 BY MR. KLEIN:

13 Q Wouldn't the manufacturer choose to use a
14 process for manufacturing civilian and military guns
15 that is as close as possible to each other?

16 MR. SWEENEY: Objection.

17 THE WITNESS: I'd have to speculate as to
18 what manufacturers try to do. My guess would be that a
19 manufacturer tries to develop a targeted product for a
20 targeted market. And then if by modifying that
21 product, they can also tap another market, if they

1 think that's a lucrative market that fits with their
2 overall corporate plan, they might want to try to do
3 that. Again, I don't know.

4 BY MR. KLEIN:

5 Q They'd want to modify it as little as
6 possible in order to keep costs down, right?

7 MR. SWEENEY: Objection.

8 THE WITNESS: The same answer.

9 BY MR. KLEIN:

10 Q Turn to page 146, please.

11 A Okay.

12 Q Line 18, the question is: "Why would
13 someone prefer that bullpup configuration?"

14 Your answer is: "It's more compact. In a
15 military police, or self-defense situation, it would be
16 easier to maneuver in tight indoor spaces."

17 Is that still an accurate answer?

18 MR. SWEENEY: Objection.

19 THE WITNESS: There should be a comma
20 between military and police. But that is a partial
21 explanation of advantages that a bullpup configuration

1 can offer.

2 BY MR. KLEIN:

3 Q It's generally true that a shorter barrel
4 is easier to maneuver in a tight indoor spaces?

5 MR. SWEENEY: Objection.

6 THE WITNESS: On most bullpup designs, it's
7 not the overall length of the barrel, but it's how the
8 barrel is mounted in the firearm. It produces a
9 shorter overall firearm, which would make it easier to
10 manipulate in indoor spaces.

11 BY MR. KLEIN:

12 Q And generally, a shorter overall firearm is
13 easier to manipulate in indoor spaces, right?

14 MR. SWEENEY: Objection.

15 THE WITNESS: I think all other things
16 being equal, we're talking comparable designs, assuming
17 either a rifle or a shotgun, I think that would
18 probably be accurate.

19 BY MR. KLEIN:

20 Q Page 157.

21 A Okay.

1 Q You testified: "Springfield Armory has
2 typically made good copies of existing designs for
3 their rifles."

4 Do you see that?

5 A Yes, sir.

6 Q That includes AR-15s, right?

7 MR. SWEENEY: Objection.

8 THE WITNESS: Gosh, I don't know if
9 Springfield Armory has introduced copies of the AR-15
10 or not. I think -- when I think of them, I think
11 primarily of semi-automatic copies of the M14 and
12 copies of the 1911 military pistol.

13 BY MR. KLEIN:

14 Q So you don't know whether they've also
15 introduced an AR-15 platform rifle?

16 A It wouldn't surprise me at all if they had
17 because it's so popular in the market. But I can't say
18 with certainty that they had.

19 Q Okay. Let's take a short break.

20 (A brief recess was taken.)

21 ///

1 BY MR. KLEIN:

2 Q We've been talking about Exhibit 3, the
3 transcript from the Kolbe case. If you could turn to
4 page 111, please.

5 A Yes, sir. Okay.

6 Q On line 13, you were asked the question:
7 "Do you know of situations -- do you
8 personally know of situations in which someone expended
9 10 rounds in self-defense of the home?"

10 And your answer is: "Other than police
11 officers?"

12 And Mr. Friedman responded: "Self --
13 civilian self-defense of the home."

14 And your answer was: "I do not."

15 Is that still true that you don't know of
16 situations in which someone expended 10 rounds of
17 ammunition in self-defense of the home?

18 A That's still true. I don't know a specific
19 instances. I've heard allusions to that happening, but
20 I've never seen the actual report.

21 Q You can't give me the facts of any of those

1 incidents?

2 A No, sir. I can't.

3 MR. KLEIN: I have nothing further.

4 MR. SWEENEY: He'll read and sign.

5 (Deposition concluded at 4:16 p.m.)

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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary will be made on the Errata Sheet.

JIM SUPICA

Date

(If needed, make additional copies of the Errata Sheet on the next page or use a blank piece of paper.)

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REASON FOR CHANGE

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1 District of Columbia, to wit:

2 I, Melinda Johnson, CSR, a Notary Public of
3 the District of Columbia, do hereby certify that the
4 within-named witness personally appeared before me at
5 the time and place herein set out, and after having
6 been duly sworn by me, according to law, was examined
7 by counsel.

8 I further certify that the examination was
9 recorded stenographically by me and this transcript is
10 a true record of the proceedings.

11 I further certify that I am not of counsel
12 to any of the parties, nor in any way interested in the
13 outcome of this action.

14 As witness my hand this 2nd day of November,
15 2017.

16  _____

18 Melinda Johnson, CSR

19 Notary Public

20 My Commission Expires:

21 February 14, 2022

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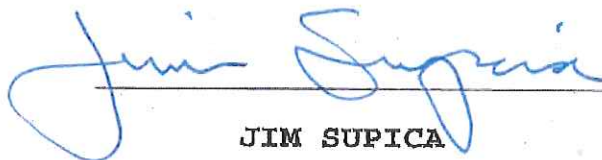
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CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary will be made on the Errata Sheet.

(Approx. 31 corrections)


JIM SUPICA

12/6/2017

Date

(If needed, make additional copies of the Errata Sheet on the next page or use a blank piece of paper.)

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ERRATA SHEET (page 1 of 2)

Case: David Worman, et al. vs. Charles Baker, et al.

Witness: JIM SUPICA

Date: 10/30/2017

PAGE/LINE	SHOULD READ	REASON FOR CHANGE
7/14	Subst. "Jim" for "John"	Error
44/8	Subst. "Cody" for "encoding"	Error
75/16	Add "platform" after "AR-15"	Error
80/9	Subst. "recoil" for "recall"	Error
95/13	Subst. ".308" for "3.08"	Error
116/15&16	Subst. "different chamberings"	
	For "indifferent chambering"	Error
118/15	Subst. "version" for "in forth"	Error
125/13	Subst. "burst" for "reversed"	
126/3	Subst. "The rate" for "As rate"	Error
127/8	Subst. "AK platform" for "AK-47 platform"	Error
131/5	Subst. "are some" for "is some"	Error
135/1	Subst. "army" for "Army"	Error
144/19	Subst. "Just as" for "just ask"	Error
145/1	Subst. "speed" for "street"	Error
149/10	Delete "on it"	Error
155/1	Add "legal" after "are"	Error
172/15	Subst. "inoperative" for "an operative"	Error

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ERRATA SHEET (page 2 of 2)

Case: David Worman, et al. vs. Charles Baker, et al.

Witness: JIM SUPICA

Date: 10/30/2017

PAGE/LINE SHOULD READ

REASON FOR CHANGE

177/7&8 This is a continuous sentence184/5 Subst. "price" for "prices"Error193/12 Subst. "facts" for "fact"Error198/16 Subst. "impart spin" for ", in part, extend" Error199/18 Subst. "weapons" it's" for "weapons." It's"Error204/15 Subst. Sturmgemehr" for "stormy affair" Error214/15 Subst. "each" for "these"Error218/13 Subst. "bolt" for "bold"Error220/16 Subst. "and" for "of"Error222/4 Subst. "shoot. A gun" for "shoot a gun"Error234/20 Subst. "first" for "fist"Error237/12 Subst. "book this" for "this book"Error253/20 Subst. "Inaccurately" for "And accurately" Error270/10 Subst. "are" for "is"Error

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CONFIDENTIAL DESIGNATIONS SHEET

Case: David Worman, et al. vs. Charles Baker, et al.

Witness: JIM SUPICA

Date: 10/30/2017

PAGE/LINE	TO	PAGE/LINE	REASON FOR CONFIDENTIALITY
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4/18		4/19	Personal firearms
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5/10		17/13	Home address
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17/18		18/1	Personal firearms
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EXHIBIT 12
TO KAPLAN DECLARATION

DANIEL COURT REPORTING, INC.

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID SETH WORMAN, et al.,

Plaintiffs,

Case No.

vs.

1:17-CV-10107-WGY

MAURA HEALEY, et al.,

Defendants.

* * * * *

DEPOSITION OF GARY KLECK

* * * * *

Taken before Kathy Hart Canaday, Registered
Professional Reporter, Certified Court Reporter
#586 and Notary Public for the State of Alabama,
on the 25th of October, 2017, at 9:18 a.m. at
the offices of Bradley, Arant, Boult, Cummings,
One Federal Place, 1819 5th Avenue North,
Birmingham, Alabama 35203.

S T I P U L A T I O N

IT IS STIPULATED and agreed by and between the parties through their respective counsel that said deposition may be taken by me on this date.

IT IS FURTHER STIPULATED and agreed that it shall not be necessary for any objections to be made by counsel to any questions, and that counsel for the parties may make objections and assign grounds at the time of the trial, or at the time said deposition is offered in evidence, or prior thereto.

IT IS FURTHER STIPULATED that notice of filing of deposition is waived.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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DANIEL COURT REPORTING, INC.

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EXAMINATION BY:

MR. KLEIN

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2	Expert Report of Gary Kleck dated 09/09/2017	21
3	Declaration of Gary Kleck dated 03/16/2014	140
4	Deposition of Gary Kleck dated 01/02/2014	169
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1 I, Kathy Hart Canaday, a Certified
2 Court Reporter for the State of Alabama acting
3 as Commissioner, certify that on this date, as
4 provided by the Alabama Rules of Civil Procedure
5 and the foregoing stipulations of counsel, there
6 came before me this witness in the above cause,
7 for oral examination, whereupon the following
8 proceedings were had:

9
10 GARY KLECK,
11 being first duly sworn, was examined
12 and testified as follows:

13
14 EXAMINATION

15 BY MR. KLEIN:

16 Q. It's Dr. Kleck, correct?

17 A. Sure.

18 Q. I'm Gary Klein. I'm one of the
19 lawyers for the Defendants in the matter of
20 Worman versus the Attorney General of the State
21 of Massachusetts. We're here today for your
22 deposition. Have you had your deposition taken
23 before?

1 A. Yes.

2 Q. That means you have an understanding
3 of the way these depositions work?

4 A. Yes.

5 Q. You understand that you've taken an
6 oath to answer all questions truthfully to the
7 best of your ability, right?

8 A. Yes.

9 Q. Just a couple of quick ground rules.
10 First, it's important that we try not to talk
11 over each other. If we do, it makes the
12 reporter's life difficult because she can't take
13 everything down. Okay?

14 A. Okay.

15 Q. What that means is I want you to wait
16 until I finish a question before you try to
17 answer; and by the same token, I'll try to wait
18 for you to answer completely before I ask
19 another question. Okay?

20 A. Yes.

21 Q. If you have any concern that you
22 don't understand a question, please let me know;
23 because if you answer the question, I'm going to

1 assume that you understood it. Okay?

2 A. Okay.

3 Q. And if you need a break at any time,
4 just let me know.

5 A. I will.

6 Q. Can you state your home and business
7 address for the record?

8 A. I'm retired, so I don't really have a
9 business address. [REDACTED]

Re
dac
ted
Dis

11 Q. Can you tell me when you retired?

12 A. May of last year, 2016.

13 Q. And what position did you retire
14 from?

15 A. Professor.

16 Q. At what institution?

17 A. Florida State University, College of
18 Criminology and Criminal Justice.

19 Q. Do you still have any affiliation at
20 all with Florida State University?

21 A. Yes, I'm an emeritus professor.

22 Q. What are your duties as an emeritus
23 professor?

1 A. Not a thing. It's all privilege and
2 no duties.

3 Q. That sounds pretty awesome. Do you
4 have any other businesses or work that you're
5 engaged in at this time?

6 A. Other than in consulting like this,
7 no.

8 Q. So you take on consulting projects --

9 A. I do.

10 Q. -- for various purposes?

11 A. I do.

12 Q. People who want to use you as a
13 consultant contact you at home?

14 A. Yes.

15 (Whereupon, Defendant's Exhibit 1
16 was marked for identification and
17 same is attached hereto.)

18 Q. I'm going to show you a document
19 that's labeled Exhibit 1.

20 MR. KLEIN: Do you have a copy of
21 this?

22 MR. PORTER: I didn't bring one, but
23 I don't need one.

1 Q. Is this a document you've seen
2 before?

3 A. It is.

4 Q. And you understand this to be a
5 subpoena for your testimony today?

6 A. I do.

7 Q. If you turn to the third to last
8 page, I want to direct your attention to the
9 bottom paragraph on that page. Do you see it?

10 A. Yes.

11 Q. The Deponent -- it says this, right,
12 the Deponent is directed to bring with him his
13 file for this matter including, but not limited
14 to correspondence, handwritten notes, memoranda,
15 photographs, video recordings, studies, reports,
16 literature, spreadsheets, electronic
17 communications he has reviewed or authored in
18 regards to this matter. Did I read that
19 correctly?

20 A. You did.

21 Q. Have you brought anything with you
22 today?

23 A. I have my notebook computer and it

1 has this material in it. Well, it doesn't have
2 handwritten notes. But I don't really have any
3 handwritten notes.

4 Q. Everything else here would be on your
5 computer?

6 A. I believe so.

7 Q. And is it your intention to reference
8 it?

9 A. Of the things that are relevant of
10 the things that I have, they're on there. I
11 don't think I make any use of photographs or
12 video recordings.

13 Q. So you consider the file on your
14 computer for this matter to be your file for
15 this case?

16 A. Yes.

17 Q. So I think I need you to do me a
18 favor and open up your computer and just read me
19 the file names of the documents you have with
20 you.

21 A. One is called 140 section 121 and
22 13M -- 131M.

23 Q. Do you know what that -- let's take

1 them one at a time just so I can ask you what
2 they are.

3 A. I'd have to open it up.

4 Q. Go ahead.

5 A. That appears to be the Massachusetts
6 statute defining assault weapon.

7 Q. And that's something you reviewed in
8 connection with this matter?

9 A. Yes.

10 Q. What file is next?

11 A. AGO interrogatory responses. And
12 let's see, that is responses of Maura Healey in
13 her capacity as Attorney General for Plaintiffs'
14 First Set of Interrogatories to all Defendants.

15 Q. And that's something you reviewed in
16 connection with this case?

17 A. Yes. Although, I probably couldn't
18 tell you a thing about it. It really doesn't
19 have any bearing on any of my opinions. But
20 it's in there.

21 Colwell report. So that's a report
22 by one of your witnesses. EOPSS interrogatory
23 responses, final. And that is responses of

1 Defendant Daniel Bennett in his capacity as
2 Secretary of Public Safety and Security to
3 Plaintiffs' First Set of Interrogatories to all
4 Defendants.

5 Q. Is that something you reviewed in
6 this case?

7 A. It is. But again, I couldn't tell
8 you anything that's in it. It didn't have
9 anything to do with my conclusions.

10 The next one is EOPSS spreadsheet A,
11 INTS, I-N-T-S, period, 2017, 88-COR. And that
12 is a spreadsheet, an Excel spreadsheet, which I
13 didn't really make use of. But it's some kind
14 of listing of crimes, I think.

15 Q. So you're saying that's something you
16 didn't make use of?

17 A. No. Yeah -- I mean, this is stuff
18 that was sent to me, but it's not necessarily
19 anything that, you know, had any influence on my
20 opinions.

21 Then there is Gius, G-I-U-S, 14 AW
22 bans. And that's an article by a guy named
23 Gius, G-I-U-S, on the effect of assault weapon

1 bans on murder rates in general.

2 Q. Is that something you reviewed in
3 connection with your opinion?

4 A. Yes. I had read it before, but I
5 reviewed it again.

6 Q. Could you read me the title one more
7 time? I'm sorry.

8 A. Okay. It's G-I-U-S 14. That's my
9 way of denoting it. It's the year it was
10 published. AW bans, B-A-N-S.

11 Q. And is J-I-U-S (sic) the publication
12 name?

13 A. G-I-U-S.

14 Q. G-I-U-S.

15 A. That's the author's name.

16 Q. I see. And do you remember the
17 author's conclusions in that matter?

18 A. I think he concluded no effect of
19 assault weapon bans on general homicide rates.

20 Okay. And the next one is -- I think
21 it's my declaration in the Maryland case. It's
22 titled MD Declaration K5. Oh, it's expert
23 report of Gary Kleck. I may have duplicate

1 copies of that in the file.

2 Q. And that's your report in the
3 Maryland case that we were talking about
4 earlier?

5 A. Yes, Kolbe et. al, versus O'Malley,
6 et. al.

7 Q. Thank you. What's next?

8 A. I think this is the duplicated. It's
9 MD Expert Report of Gary Kleck, Final. And I
10 think it's really just the same thing. Yeah.
11 It says the same thing, so there's duplicates of
12 that.

13 Q. I'm just going to have to remind you
14 to keep your voice up so the reporter can take
15 down your answers.

16 A. Oh, okay.

17 Q. Thank you.

18 A. Let's see, the next one is titled MSP
19 Response to Interrogatories. And it is titled
20 Defendant Colonel Richard D. McKeon's Responses
21 to Plaintiff's First Set of Interrogatories.
22 And again, I read it, but I couldn't tell you
23 anything about it. It didn't have any impact on

1 my opinions.

2 Then Notice of Enforcement is the
3 next file. And this is where the Attorney
4 General's office defines what they mean by
5 copies or duplicates of weapons.

6 Q. Okay.

7 A. And then there is -- oh, it's called
8 Sig Mass, S-I-G M-A-S-S, and it's just the
9 signature page in my expert report for the
10 Massachusetts case.

11 Q. Okay.

12 A. And the next one is Spitzer comments.
13 And that was comments on one of your experts,
14 Robert Spitzer, I think.

15 Q. When you say comments on, that's
16 something you wrote or something you received
17 that he wrote?

18 A. Something I wrote. My comments on
19 his report. And then the next file is Spitzer
20 report, the thing I was commenting on.

21 And then the next one is The Impact
22 of State and Federal Assault Weapons Bans on
23 Public Mass Shootings, which is another article,

1 a different one by G-I-U-S. And I don't know
2 how that's pronounced. And in this case the
3 focus is on the effect of assault weapon bans on
4 public mass shootings rather than murder in
5 general, which is what the first article was
6 about.

7 Q. Do you remember what the conclusions
8 were?

9 A. He said it did have an impact.

10 Q. That it did have an impact?

11 A. Yes.

12 Q. Thank you.

13 A. And the next one is labeled UCR
14 05-15. And it's a table from the Uniform Crime
15 Reports. Actually it's a series of tables. And
16 it's murder by state, type of weapon for the
17 years 2005 through 2015, I think. And that was
18 supplied to me, I think, by Mr. Porter. It's
19 already labeled an exhibit, so somebody used it
20 as an exhibit. And it basically confirms that
21 murdering with any kind of rifle, assault rifle
22 or otherwise are virtually nonexistent in
23 Massachusetts. I mean, zero or one in a typical

1 year.

2 And then the next one is Washington
3 hashtag, or whatever that symbol is,
4 62891-V1-Worman, underscore, report. Let's see.
5 I think that's my expert report in this case.
6 Is this Worman?

7 Q. Yes.

8 A. Yeah, that's what it is.

9 Q. That's the last time I let you ask me
10 a question and I answer it.

11 A. I need help. And then the last file
12 in the file is the report of James Yurgealitis.
13 And the file is titled Yurgealitis Report.
14 That's it.

15 Q. I just have a couple of questions
16 about the documents you've just reviewed with
17 me. You mentioned that you made notes on
18 Spitzer's report. Is that something you shared
19 with counsel?

20 A. Yes.

21 Q. Did you make notes on Colwell's
22 report?

23 A. Oh, yes -- yeah. In fact, the

1 Spitzer comments might encompass that as well.
2 They're mostly about Spitzer. But there may be
3 a little bit about -- yeah, there's also some
4 stuff about Colwell in there. So what I -- the
5 file labeled Spitzer Comments is actually about
6 Spitzer, Colwell and Yurgealitis. But it's
7 mostly about Spitzer, so that's why I called it
8 Spitzer Comments.

9 Q. And have you been asked to prepare an
10 additional declaration or report for this matter
11 based on your review of those reports?

12 A. Beyond my expert report?

13 Q. Yes.

14 A. No.

15 Q. And you mentioned an article by
16 Mr. Gius, the second one, Effect of State
17 Assault Weapons Bans on Public Shootings. Is
18 that the correct title?

19 A. The Impact of State and Federal
20 Assault Weapons Bans on Public Mass Shootings.

21 Q. And you mentioned that he concluded
22 that it did have an impact, right?

23 A. That's what he concluded.

1 Q. Is that something you considered in
2 connection with your report in this matter?

3 A. Considered and rejected, because it's
4 too flawed to draw any conclusions.

5 Q. So you believe that study is flawed?

6 A. Yes. Well, all studies are flawed,
7 but this one is fatally flawed.

8 Q. And when you say all studies are
9 flawed, I assume you include your own?

10 A. Yeah, absolutely. Everybody's are.

11 Q. And that's because the data and
12 information available to do these studies is
13 typically flawed, right?

14 A. It's either flawed or it's
15 incomplete. It might be perfectly fine as far
16 as it goes, but we're missing crucial or
17 relevant information.

18 Q. Is it fair to say that when you're
19 missing crucial or relevant information, that's
20 a flaw in the data that affects the study?

21 A. I would make a distinction between
22 information you have and you know there's
23 problems with it versus information you don't

1 have.

2 Q. But both are effectively limitations
3 on what you can conclude based on the data?

4 A. Yes.

5 MR. KLEIN: All right. Let me just
6 ask counsel if he would object to production of
7 the notes that Dr. Kleck made on the expert
8 reports he reviewed?

9 MR. PORTER: Yes, we would object.

10 Q. All right. So what I would like to
11 do, and figure out how to do this over the
12 course of the next couple of hours, is ask you
13 to give me copies of the two Gius articles.
14 J-I-U-S or G-I-U-S?

15 A. G.

16 Q. G-I-U-S. And of the UCR data table
17 that you have in your file.

18 MR. KLEIN: Off the record for just a
19 minute.

20 (Off-the-Record discussion)

21 Q. So you reviewed all of the documents
22 and described them all that are in your computer
23 file for this case, right?

1 A. Yes.

2 Q. Is there anything else that you
3 reviewed, other documents in connection with
4 preparing your report in this case?

5 A. Only the things that are cited in the
6 expert report that are in that list of
7 references.

8 Q. So if you listed something as a
9 reference, it meant that you reviewed it?

10 A. It is.

11 (Whereupon, Defendant's Exhibit 2
12 was marked for identification and
13 same is attached hereto.)

14 Q. So let me give you this document,
15 Exhibit Number 2.

16 MR. KLEIN: You don't need this one,
17 right?

18 MR. PORTER: Right. This is for
19 Worman and not the copy from Kolbe, correct?

20 MR. KLEIN: That's right.

21 MR. PORTER: Okay. That's fine.

22 A. This looks likes there's two of them.

23 Q. Oh, that's possible. Was there a

1 copying error made?

2 A. (Indicating).

3 Q. You can pull them apart.

4 A. (Witness complies).

5 Q. I'll take that back.

6 A. I knew it was a little thick.

7 Q. Do you feel like that's a complete
8 report at this time?

9 A. Well, it was more than complete, it
10 was twice as long.

11 Q. What I have, just so we're sure we
12 have the full copy of your report, is a report
13 that begins on the first page. It says at the
14 top, Expert Report of Gary Kleck. Do you see
15 that?

16 A. Yes.

17 Q. And that's you, right?

18 A. Yes.

19 Q. And then on the last page -- page 41;
20 is that right?

21 A. Yes.

22 Q. And the last thing on that page is
23 Flanagan versus Becerra, a U.S. District Court

1 case from the Central District of California?

2 A. Yes.

3 Q. Do you understand this to be the
4 expert report you produced and that was served
5 on us in connection with this matter?

6 A. I believe so.

7 Q. And if you go to page 14 of this
8 report, is that your signature?

9 A. Yes, it is.

10 Q. And at the top of that page it says
11 References. Are those the references you
12 described earlier as other things that you
13 reviewed in connection with the preparation of
14 this report?

15 A. Yes.

16 Q. So these references, together with
17 the material in your computer file, are the
18 things you reviewed in connection with the
19 preparation of the report?

20 A. Yes.

21 Q. And just to be clear, you mentioned
22 that you had a copy of Dr. Colwell's report,
23 Mr. Yurgealitis's report and Professor Spitzer's

1 report. Those are things that were provided to
2 you after you completed your work on your
3 declaration, right?

4 A. I'm not sure I had a declaration, I
5 had an expert report. Is there a distinction?

6 Q. I wasn't making any distinction.

7 A. Oh. I don't really know when I got
8 those. My vague recollection is I got those
9 after I had done the report, after September
10 9th. But really, I honestly can't remember. If
11 what you're getting at is did it have any affect
12 on the content of the expert report, the answer
13 is no.

14 Q. Thank you. The report you prepared
15 for this case is similar to a report you
16 prepared in the case, Kolbe versus O'Malley that
17 we've been discussing?

18 A. Yes.

19 Q. And in that case you also worked on
20 behalf of the Plaintiffs and their claim that
21 the assault weapons ban in Maryland is
22 unconstitutional, right?

23 A. I didn't really opine on the

1 constitutionality or any other legal issues. I
2 was asked for a criminological assessment.

3 Q. But you worked on behalf of the
4 Plaintiffs, right?

5 A. Yes, I did.

6 Q. And the same, you worked on behalf of
7 the Plaintiffs in terms of their claim
8 concerning large capacity magazines, right?

9 A. Yes.

10 Q. So do you remember making changes to
11 the report that you made for Maryland when you
12 produced the report for this case?

13 A. Yes. I don't think they were of any
14 great substance or significance. But the only
15 one of possible significance would be in between
16 those two cases, I had completed work on my own
17 study of large capacity magazine use in mass
18 shootings. And so, the current report in this
19 case alludes to that one. It's listed in the
20 references.

21 Q. So, your study is listed rather than
22 the data that you provided in connection with
23 the earlier report?

1 A. Right. And there are changes in that
2 study.

3 Q. Okay. So, I am -- I was going to get
4 to this issue later, but let me just ask some
5 preliminary questions about it now. If you will
6 turn to page 13 of your report.

7 A. (Witness complies).

8 Q. At the bottom of that page it says,
9 Source: Kleck (2016). Do you see that?

10 A. Yes.

11 Q. And that's a reference to the report
12 that's listed on page 14 called Large Capacity
13 Magazines and the Casualty Counts in Mass
14 Shootings, the Plausibility of Linkages, which
15 was published in the Journal of Justice Research
16 and Policy. Is that right?

17 A. That's right.

18 Q. And so, in the Maryland report, if
19 I'm not mistaken, you had an appendix that
20 listed data. Is that data the data that was
21 primarily the source for the 2016 article?

22 A. No. That's what I'm alluding to when
23 I say there was a change.

1 Q. So how was the data changed from what
2 you --

3 A. Um --

4 Q. -- provided to --

5 A. You'll laugh at me for not realizing
6 this immediately. But it occurred to me,
7 belatedly, the only kinds of mass shootings in
8 which a large capacity magazine could possibly
9 have affected the number of casualties; that is,
10 the number of people killed or injured, is if
11 the incident involved a shooter who used a large
12 capacity magazine. And so there was no need to
13 review the thousands, literally thousands of
14 mass shootings where there's no affirmative
15 evidence that the person used a large capacity
16 magazine. And so, the second study is
17 confined -- the second version of the study is
18 confined to cases where it was publicly known
19 that the shooter had used a large capacity
20 magazine.

21 Q. So, when you say confined to, you
22 mean that you selected only studies where there
23 was some sort of public report or a news report

1 that suggested that a large capacity magazine
2 was used?

3 A. That's correct.

4 Q. And it's possible that large capacity
5 magazines were used in some of the other mass
6 shootings, but you didn't have any news report
7 or public report to reach that collusion, right?

8 A. Yeah. There was no publicly
9 available evidence affirmatively establishing
10 the involvement of a large capacity magazine.
11 It wouldn't have to be a media report. In some
12 cases there were publicly available reports from
13 governmental entities; law enforcement agencies,
14 commissions and so forth.

15 Q. But the absence of such a report that
16 mentions a large capacity magazine doesn't mean
17 that no large capacity magazine was used in
18 those incidents, right?

19 A. Not definitively, no. It's possible,
20 though unlikely, that large capacity magazines
21 were used in other incidents where it wasn't
22 explicitly mentioned.

23 Q. And why do you say it's unlikely?

1 A. Because there are people powerfully
2 motivated to identify every single case of a
3 mass shooting in which a large capacity magazine
4 is used, including essentially every major gun
5 control advocacy organization. They have staff
6 literally combing through media reports, looking
7 for any indication of large capacity magazine
8 use.

9 Q. So when you did that study, did you
10 go through all the gun control advocacy groups'
11 materials about mass shootings?

12 A. Yes.

13 Q. And you looked for evidence that they
14 might have turned up that a large capacity
15 magazine was used?

16 A. Yes.

17 Q. Isn't it possible that in some
18 shootings there is no access, either by the
19 public or to a advocacy group looking for the
20 issue that bears on the question of what type of
21 magazine was used?

22 A. I kind of lost the thread of your
23 question.

1 Q. That's fair enough. It wasn't a
2 particularly well-asked question.

3 It's possible that there are mass
4 shootings in which there is no public
5 information about the type of magazine that was
6 used?

7 A. Yes.

8 Q. In connection with the case Kolbe
9 versus Maryland, you worked with the same
10 lawyers that you're working with in this matter,
11 correct?

12 A. Honestly, I don't remember.

13 Q. You don't remember that it was the
14 same law firm?

15 A. No, I really don't retain that kind
16 of information. Sorry.

17 Q. Have you worked with the Bradley firm
18 in other cases?

19 A. I think I have, yeah.

20 Q. But you don't know which cases?

21 A. No.

22 Q. Do you know if it's more than one
23 other case?

1 A. Don't know, no.

2 Q. What is your definition of a mass
3 shooting?

4 A. In the research I did, I defined it
5 as a single incident in which more than six
6 people were killed or injured.

7 Q. Have you ever used a different
8 definition in connection with research you've
9 done?

10 A. I don't recall any offhand. It's
11 possible it was slightly different in a book I
12 wrote called Point Blank. But it's -- yeah, in
13 that case it might have been incidents which
14 have a minimum number of people killed and it
15 didn't take account of people non-fatally
16 wounded. But you're asking me about something
17 published a quarter of a century ago, so I don't
18 really recall exactly what definition I used.

19 Q. Have you ever used a definition which
20 involved four or more deaths or injuries in
21 connection with a shooting?

22 A. I don't think so.

23 Q. Are you aware that there are

1 institutions and other individuals who have done
2 research where they've used that definition?

3 A. Yes.

4 Q. And is there a basis on which you
5 choose six as a threshold for mass shooting?

6 A. My thinking initially was that the
7 most common capacity of revolvers is six rounds.
8 And so the distinction was between incidents
9 where somebody would need something beyond the
10 capacity of a traditional six-shot revolver to
11 shoot that many victims. So that's why it was
12 up through six versus over six.

13 Q. And so the concept that you're using
14 in creating the definition that you use for your
15 research is that if someone had a six-shot
16 revolver, they could kill or injure six
17 individuals, right?

18 A. Yes.

19 Q. But, of course, if you have a
20 six-shot revolver, you could also miss somebody
21 with at least one of your shots, right?

22 A. Yes. And any numerical cutoff is
23 somewhat arbitrary. That one just struck me as

1 a little less arbitrary.

2 Q. Do you have any sense of how many
3 mass shootings under your definition there have
4 been in the last twelve months in the United
5 States?

6 A. Total or involving large capacity
7 magazines?

8 Q. Total.

9 A. No.

10 Q. And do you have any sense of how many
11 shootings --

12 A. Well, actually, as I sit here, no.
13 But I may have noted that from the Shooting
14 Tracker website. I may have tabulated that kind
15 of count. I couldn't tell you what it is here
16 and now, but I might well have done that.

17 Q. What is the Shooting Tracker website?

18 A. Shootingtracker.com is an internet
19 website that's devoted to compiling data on gun
20 violence. And the portion that's relevant to my
21 research on large capacity magazines was a
22 compilation of every shooting in which -- I
23 think their cutoff is four or more people are

1 shot, either fatally or non-fatally, and
2 they've -- as far as I can tell, they fairly
3 comprehensively covered incidents for roughly
4 the last three years or so when they started
5 around 2014 or so.

6 Q. So they use a definition of four or
7 more deaths or injuries?

8 A. I think they do, yes.

9 Q. And do you then cull them for mass
10 shootings that meet your definition of six or
11 more?

12 A. Well, those would be a subset, yes.

13 Q. Right. Do you yourself sort the data
14 and information they publish in order to
15 identify those that involve six or more injuries
16 or deaths?

17 A. I believe at one time I did compile a
18 count like that.

19 Q. And you rely on the Shooting Tracker
20 website for your research?

21 A. Other than that simple -- I really
22 rely on it for one point, which is that there's
23 this enormous number of mass shootings and

1 hardly any of them involve, as far as we know, a
2 large capacity magazine being used. It's under
3 one percent of the mass shootings listed on the
4 Shooting Tracker.

5 Q. It's less than one percent where they
6 have identified the shooting to involve a large
7 capacity magazine?

8 A. No. The Shooting Tracker website
9 establishes, as best we can, the full universe
10 of mass shootings. But the information on how
11 many mass shootings involve use of a large
12 capacity magazine, I relied primarily on the
13 Violence Policy Center's compilation of such
14 incidents. And again, they are an entity
15 well-motivated to identify as many of the cases
16 publicly known to involve large capacity
17 magazines as they could. And if you take their
18 number in a typical year, divide it by the
19 number of mass shootings defined on Shooting
20 Tracker, it's well under one percent.

21 Q. And do you happen to know the
22 methodologies employed by the Violence Policy
23 Center to identify shootings that involve large

1 capacity magazines?

2 A. I believe it searches news media
3 outlets, and I believe primarily using the
4 internet.

5 Q. And so in general, you believe that
6 the best information we have about mass
7 shootings is what's published in media reports
8 or which is otherwise publicly available in a
9 public report by a governmental agency?

10 A. It's best in some respects. It's
11 best in the extent of its coverage. It wouldn't
12 be best in terms of the details about each
13 incident. No one law enforcement source would
14 cover large numbers of mass shootings as I've
15 defined them. But a law enforcement agency that
16 was involved in investigating a particular mass
17 shooting would have considerable detail that
18 doesn't show up in a news media outlet.

19 Q. So it's possible that large capacity
20 magazines were used in a particular incident,
21 but that it was never -- that information was
22 never released in any form to a news media
23 outlet, correct?

1 A. It's possible.

2 Q. And when you do your research, you
3 don't attempt to find nonpublic police reports
4 about mass shooting incidents, right, you rely
5 on what's publicly available?

6 A. Well, I wouldn't be able to get law
7 enforcement reports that were not publicly
8 available. For example, recent cases where, you
9 know, the case is still under investigation.
10 Normally outsiders couldn't get access to those
11 files. But for some of the more prominent cases
12 that had been resolved, for example, the shooter
13 was dead, there was often a publicly available
14 report on the internet and I made use of that.

15 Q. So really your research is
16 internet-based research, correct?

17 A. Yes. Including the fact that
18 material that originally appeared in print then
19 may appear on the internet.

20 Q. Right. So you don't know if the
21 Violence Policy Center is using
22 shootingtracker.com to identify the mass
23 shooting incidents it investigates, do you?

1 A. I don't know one way or the other for
2 sure. But they would be foolish not to make use
3 of that resource.

4 Q. And when you cull through the
5 information that's available from the Violence
6 Policy Center about large capacity magazines,
7 you don't include incidents where five or fewer
8 individuals were killed or injured, right?

9 A. I don't include -- no, actually it's
10 six or fewer.

11 Q. So your definition is --

12 A. Over six.

13 Q. More than six?

14 A. Right. Over six.

15 Q. So it has to be at least seven killed
16 or injured in the incident?

17 A. Correct. Correct. But could you ask
18 the question again? I'm not sure I answered it.

19 Q. Right. When you review the material
20 published by the Violence Policy Center, you
21 aren't looking at the incidents which involve
22 six or fewer individuals killed or injured?

23 A. Yeah, I don't count the ones as mass

1 shootings that have six or fewer victims. For
2 example, sometimes their counts include the
3 offender if he's killed during the incident.
4 And so the numerical criterion refers to number
5 of victims, not counting offender or offenders,
6 plural.

7 Q. Thank you for that clarification. So
8 it's possible that there are some incidents with
9 six or fewer victims that involve large capacity
10 magazines and you wouldn't count those as large
11 capacity magazines used in mass shootings?

12 A. That's correct.

13 Q. Since you wrote the report in this
14 matter, there was a mass shooting in Las Vegas.
15 Are you aware of that?

16 A. Yes.

17 Q. Are you familiar with that incident?

18 A. Only what I've seen in the news.

19 Q. And you have reviewed the news
20 reports that are publicly available to get some
21 understanding of that incident?

22 A. A little bit, yeah.

23 Q. And do you understand how many people

1 were killed in that incident?

2 A. I don't really recall the number,
3 just that it was very large.

4 Q. Very large meaning approximately how
5 many?

6 A. Certainly at least dozens, maybe over
7 a hundred, I'm not sure.

8 Q. And how many people were injured?

9 A. Hundreds.

10 Q. But you don't know the number?

11 A. No.

12 Q. Does the fact of the mass shooting in
13 Las Vegas change any of the opinions in your
14 report?

15 A. No.

16 Q. Do you know if the shooter in that
17 incident used any AR-15 rifles?

18 A. I've seen news reports to the fact he
19 used an AR style -- one or more AR style rifles.

20 Q. Do you have any reason to disagree
21 with the news reports you've seen?

22 A. No.

23 Q. Do you know if the shooter in

1 those -- strike that.

2 Do you know if the shooter in Las
3 Vegas used any AK-47 rifles?

4 A. I don't know.

5 Q. Do you know if any of the AR-15
6 rifles that has been reported that he's used
7 could have been acquired legally in
8 Massachusetts at this time?

9 A. I don't know.

10 Q. Do you have any sense of how many
11 rounds were fired in Las Vegas?

12 A. My impression was hundreds.

13 Q. Do you have any sense of the rate of
14 fire in the Las Vegas incident?

15 A. I heard the audio from the news
16 reports. And it sounded on the order of
17 full-auto fire, although it turned out he didn't
18 have a fully-automatic weapon.

19 Q. So based on news reports, your
20 understanding is he had semi-automatic AR-15
21 style rifles?

22 A. Yes, with the device known as a bump
23 stock.

1 Q. Do you know if he used any large
2 capacity magazines in the shooting in Las Vegas?

3 A. I don't know.

4 Q. You haven't seen any reports
5 suggesting that he had large capacity magazines?

6 A. I don't recall any reports on the
7 capacity of the magazines.

8 Q. So even though this is an issue that
9 you've studied for your academic research, you
10 didn't take the time to figure out whether he
11 had large capacity magazines in Las Vegas?

12 MR. PORTER: Object to the form of
13 the question. You can answer.

14 A. No, it would have been totally
15 irrelevant to my research.

16 Q. Why would that have been irrelevant?

17 A. It's a utterly unique case in almost
18 every significant respect and it doesn't allow
19 one to make any generalizations about mass
20 shootings in general, never mind violence or gun
21 violence in general.

22 Q. So you would have not included it in
23 your report because you considered it unique?

1 A. Well, I probably would have included
2 it had my study period included 2017, but it
3 didn't. I mean, you have to stop your research
4 at some point. And I think I covered up through
5 2014 or so, so -- and at that point stopped.
6 So, no, it wouldn't encompass any very recent
7 incidents.

8 Q. When you say it's utterly unique, how
9 is it different from other mass shooting
10 incidents that you've studied?

11 A. The number of victims, the number of
12 rounds fired, the fact that the shooter was
13 firing from 400 yards away from an elevated
14 position. The fact that even now it seems
15 unmotivated by a person who had no prior
16 indication of mental illness and who is wealthy
17 and successful in life, whereas the typical mass
18 shooter is a person who is something of a
19 failure in life. I can't think, for example, of
20 any other mass shooting involving such a wealthy
21 person who was the shooter. So it's bizarre and
22 unusual and unrepresentative in any conceivable
23 way.

1 Q. Have --

2 A. But had I been doing an analysis of
3 all mass shootings that did encompass 2017, it
4 would have been included. It would have been
5 one highly unusual case that I wouldn't expect
6 to be repeated or typical or part of a pattern
7 likely to be repeated in the future. But yes,
8 it would have qualified because more than six
9 people were shot.

10 Q. Have you studied the demographics of
11 other mass shooters?

12 A. It's never been a focus. The focus
13 was not on the shooters, the focus was on the
14 weaponry.

15 Q. Are you familiar with the mass
16 shooting in Newtown, Connecticut?

17 A. Yes.

18 Q. Do you know anything about the
19 economic status of the shooter in Newtown,
20 Connecticut?

21 A. As I recall, he was a kid and he was
22 from a moderately but not extremely wealthy
23 family.

1 Q. And do you recall the incident in San
2 Bernardino, California?

3 A. Not offhand, no.

4 Q. So you have no sense of the
5 demographics of the shooter in San Bernardino?

6 A. No.

7 Q. Do you remember a shooting in Aurora,
8 Colorado at a movie theater?

9 A. Yes.

10 Q. Do you have any understanding of the
11 demographics of the individual who committed
12 that mass shooting?

13 A. Young, white male. Those are
14 demographics.

15 Q. But not his economic status?

16 A. No.

17 Q. Do you have a recollection of the
18 shooting at the Pulse Nightclub in Florida?

19 A. Yes.

20 Q. Do you have any understanding of the
21 demographics of the shooter in Florida?

22 A. Of his socioeconomic status, no.

23 Q. Are you aware that the CDC publishes

1 data about firearms fatalities by state?

2 A. Yes.

3 Q. Do you have any reason to doubt the
4 accuracy of the CDC's data?

5 A. Could you repeat the first question
6 before the one about do I have any reason to
7 doubt?

8 Q. Are you aware that the CDC, the
9 Center for Disease Control, publishes data about
10 firearm fatalities by state?

11 A. No, not the counts as just fatality
12 counts, firearm fatality counts. The doubts are
13 about the classification of them as homicide,
14 suicide or unintentional.

15 Q. So I think we have perhaps unclarity
16 in the record at this point. You do know that
17 the CDC publishes data about firearm fatalities,
18 right?

19 A. Yes.

20 Q. And you believe that the counts are
21 accurate, right?

22 A. Yes, when they lump all firearms
23 deaths together, those are pretty accurate.

1 Q. What you don't necessarily agree with
2 is the way they're segmenting those firearm
3 fatalities into buckets for homicide, criminal
4 activity or other categories, right?

5 A. It's not the way CDC is doing it.
6 They're just passively taking the information
7 provided by the attending physician or medical
8 examiner who filled out a death certificate. So
9 I wouldn't blame CDC for any flaws in
10 misclassification. It's just that the
11 information was erroneous on the death
12 certificate in the first place.

13 Q. So you believe that in some cases
14 death certificate information is unreliable?

15 A. Yes. It's not unreliable regarding
16 whether the victim died of a gunshot wound, it's
17 unreliable as to whether or not it was other
18 inflicted versus self-inflicted or whether it
19 was intentional or unintentional. It's also
20 often incomplete as to the type of gun that's
21 involved.

22 Q. Do you happen to know where
23 Massachusetts ranked nationally in the rate of

1 firearm deaths in the last five years?

2 A. No.

3 Q. Do you know where Florida ranks?

4 A. No.

5 Q. Do you know where Alabama ranks?

6 A. No.

7 Q. Do you have any sense that some
8 states have substantially fewer firearm deaths
9 than other states?

10 A. Yes.

11 Q. And you are unsure about the reason
12 some states have fewer firearm deaths than
13 others?

14 A. Well, I'm sure about some of the
15 reasons. And some of the reasons would include
16 that, A, they have more violent people
17 regardless of weaponry involved; and, B, they
18 have higher gun ownership.

19 Q. So if I told you that Massachusetts
20 ranks somewhere between 1 and 5 in terms of the
21 number of firearm facilities and Alabama tends
22 to rank somewhere between 46 and 50 year in and
23 year out, would you agree with that?

1 A. I would be astounded if that were
2 true. That Massachusetts is high and Alabama is
3 low?

4 Q. I probably stated it the wrong way in
5 the question, so I apologize.

6 A. You were talking about rankings.

7 Q. Yeah.

8 A. So you meant would I be surprised if
9 Massachusetts doesn't have much and Alabama had
10 a lot?

11 Q. That's right.

12 A. No, I would not be surprised by that.

13 Q. And you would attribute that to the
14 fact that there's more violent people in Alabama
15 and more firearms in Alabama than in
16 Massachusetts?

17 A. Correct.

18 Q. Is it possible that Massachusetts'
19 gun control laws have an impact on the number of
20 guns available in Massachusetts?

21 A. It's possible, but I don't think
22 historically that's what the evidence indicates.
23 Because not just Massachusetts, but the entire

1 northeastern part of the country, as far as we
2 know, always had low gun ownership, even before
3 significant gun controls that might have reduced
4 that number were implemented. That's mostly a
5 phenomenon of the 20th Century. And we have
6 evidence that it was always the south and west
7 that had high gun ownership and it was always
8 the northeast that had low gun ownership, even
9 from the late 19th Century and earlier.

10 Q. Is it possible that gun control laws
11 that make it harder for people to acquire guns
12 contribute to fewer guns being available in
13 those states?

14 A. It can contribute to fewer guns being
15 available to criminals and other high-risk
16 subsets of the population. But since they're a
17 small subset of the population, it wouldn't be
18 enough to show up for the population as a whole,
19 which is the way I interpreted your original
20 question to refer to the full population of
21 those states.

22 Q. And is this an issue that you've done
23 research on?

1 A. Yes.

2 Q. And so, you don't draw any connection
3 in your research between states that have higher
4 levels of gun control and the level of gun
5 ownership in those states?

6 A. That's correct. I mean, in fact the
7 research I've done affirmatively indicates that
8 gun control laws don't effect gun ownership
9 rates, at least for the population as a whole,
10 which is about all we have data on.

11 Q. But not state by state?

12 A. Well, some of the research was of
13 states, but it wasn't focused on any one state.

14 Q. Do you have data for Massachusetts?

15 A. Probably buried in my computer files
16 that describe states, it would be one of the 50
17 states included. But at no point has the focus
18 ever been narrowly on Massachusetts in
19 particular.

20 MR. KLEIN: Let's take a break.

21 (Brief recess was taken from
22 10:13 a.m. to 10:23 a.m.)

23 Q. Dr. Kleck, can you explain your

1 understanding of what the case in which your
2 report has been offered is about?

3 A. My understanding is that the legal
4 dispute is mainly over how the Attorney General
5 has recently defined duplicate or copy weapons
6 and thus, the scope of what is encompassed under
7 the definition of assault weapon.

8 Q. And not about the statute itself?

9 A. That wasn't my understanding.

10 Q. Did you review the complaint in this
11 matter?

12 A. I believe I did. Probably, yeah.

13 Q. Did you review the answer filed by
14 the Defendants in this case?

15 A. I don't remember what that is.

16 Q. Did you review any deposition
17 testimony of any individuals in connection with
18 your preparation of the report?

19 A. I'm not sure if there were
20 depositions, but -- no, I don't think there were
21 -- I'm sorry, let me revise that. Not
22 depositions. I've read expert reports of other
23 people, but I don't think I've read any

1 depositions.

2 Q. Are you referring to the expert
3 reports you mentioned that you have in your
4 file?

5 A. Yes.

6 Q. And you think you reviewed those
7 after you produced your report?

8 A. Maybe. I'm really not sure.

9 Q. Possibly --

10 A. The only thing I can be confident
11 about is that it didn't have any effect on the
12 report, it was irrelevant to the report. But
13 whether I read them before or after I prepared
14 the report, I don't know.

15 Q. Dr. Kleck, have you ever lived in
16 Massachusetts?

17 A. No.

18 Q. Other than the law that you have in
19 your file, have you reviewed any other
20 Massachusetts state laws that touch on gun
21 ownership?

22 A. Well, in the course of doing those
23 studies that I mentioned before that either

1 encompass all 50 states or all the seventh large
2 cities, one of the states or, you know, some of
3 the cities for which I would have that
4 information would include the state of
5 Massachusetts or Boston as a city within it.
6 But it wouldn't be a focus on either
7 Massachusetts or any cities within
8 Massachusetts. In other words, I would be
9 coding for the kind of gun control laws that all
10 states had or for the city ordinances that all
11 large cities might have.

12 Q. And based on that research, do you
13 understand that many, many weapons are not
14 banned in Massachusetts, including many semi-
15 automatic weapons?

16 A. Yes.

17 Q. And that those are available -- ones
18 that are not banned are available for use in
19 self-defense?

20 A. Yes.

21 Q. Are you aware that the Attorney
22 General has explicitly said that the Ruger
23 Mini-14 semi-automatic rifle is not banned?

1 A. I was not aware of that.

2 Q. But if I told you that were true, you
3 would conclude that that weapon could be used in
4 self-defense, correct?

5 A. Yes.

6 Q. Or if I told you that the M1A is not
7 banned in Massachusetts, that weapon could also
8 be used in self-defense, correct?

9 A. Yes, I mean, if the circumstances
10 permitted it. I mean, you know, if its long
11 size was not a problem, if the penetrating power
12 of rifles versus handguns was not a problem,
13 yes, in some circumstances it could be used for
14 self-defense.

15 Q. So the long size and penetrating
16 power you think might limit the uses of the gun
17 for self-defense, correct?

18 A. Correct.

19 Q. And you understand, too, that all
20 magazines 10 rounds and under are available to
21 civilians in Massachusetts, correct?

22 A. Yes, that is my understanding.

23 Q. And that those are available for

1 self-defense uses as well?

2 A. Yes.

3 Q. Do you have any understanding as you
4 sit here of the Massachusetts law of self-
5 defense?

6 A. Not really, no.

7 Q. Have you ever studied the
8 Massachusetts law of self-defense for any
9 purpose?

10 A. If I have, I don't recall doing so.

11 Q. Are you a lawyer?

12 A. No.

13 Q. Have you been trained in the law?

14 A. No.

15 Q. Are you offering any legal opinions
16 in connection with this case?

17 A. No.

18 Q. Is it fair to say that a summary of
19 your academic work at the broadest level is that
20 regulation of guns typically has little or no
21 effect on stopping crime?

22 A. That's certainly a large portion of
23 my research. Although, a lot of my research

1 doesn't have anything to do with guns and the
2 research that does have to do with guns often
3 does not address the issue of the effect of gun
4 control laws on violence.

5 But of that portion that does address
6 that topic, it indicates that most gun control
7 laws have no measurable net effect on violence
8 rates. An exception would be background checks,
9 which I have endorsed and supported since as
10 early as 1991, including expanding background
11 checks to cover private transfers as well as
12 dealer transfers, what is today known as
13 universal background checks. And you know,
14 there are a few other measures that may have
15 effects, like bans on acquisition by alcoholics
16 or mentally ill people.

17 Q. Anything else?

18 A. Those are the primary exceptions that
19 I can think of. So, yes, a minority of gun
20 control laws seem to have measurable net effects
21 on violence rates, but the vast majority do not.

22 Q. And is it fair to say that you
23 generally believe that gun regulation doesn't

1 have effects on the number of individuals who
2 are shot in mass shootings?

3 A. You mean the average number per mass
4 shooting or --

5 Q. In mass shootings overall. I think
6 you could think about it as an average number if
7 that's convenient for you.

8 A. If that's the case, no, I do not
9 think that it has any such effect.

10 Q. What about the overall number?

11 A. Well, the gun control laws that
12 basically reduce access to guns among dangerous
13 people can have effects on any kind of gun
14 violence, including mass shootings. It wouldn't
15 have effects especially for mass shootings, it
16 would just restrict -- it would make it less
17 likely somebody may have a gun to engage in any
18 kind of gun violence.

19 Q. So you mentioned that you're aware
20 that the shooter in Las Vegas had a device
21 called a bump stock?

22 A. Yes.

23 Q. Are you familiar with what a bump

1 stock is?

2 A. No.

3 Q. Not even to the point that you
4 understand that it increases the rate of fire
5 for a semi-automatic weapon to which it is
6 attached?

7 A. That, I understand.

8 Q. Had the shooter in Las Vegas not had
9 access to a bump stock, do you think fewer
10 people would have died?

11 A. I have no idea.

12 Q. Do you think the rate of fire in Las
13 Vegas made a difference to the number of people
14 who died?

15 A. Probably. Although I haven't given
16 it any detailed attention, but probably.

17 Q. So if the bump stock has the effect
18 of increasing the rate of fire, would it have an
19 impact on the number of people who died?

20 A. In that unique incident, probably,
21 yeah.

22 Q. And you can't imagine other incidents
23 where the same effect could occur?

1 A. Well, I can imagine lots of things.
2 But I just don't know of any real world
3 incidents where it would have made much
4 difference. All I know about real world
5 incidents is that regarding rate of fire,
6 they're not remotely like the incident in Las
7 Vegas. Instead, the rate of fire tends to be
8 quite low, way below what the firearms capacity
9 would permit.

10 Q. And you're basing that on --

11 A. And certainly nothing like what we
12 observed in Las Vegas.

13 Q. You're basing that on the Kleck
14 (2016) study that we mentioned earlier?

15 A. Yes.

16 Q. Is it fair to say that your work in
17 general has concluded that the existence of
18 large capacity magazines have little or no
19 effect on criminal activity?

20 A. I didn't catch the last part of the
21 question.

22 Q. Have little or no effect on criminal
23 activity?

1 A. Yes, that would be a fair
2 description.

3 Q. And they have little or no effect on
4 the number of individuals shot in mass
5 shootings?

6 A. Correct.

7 Q. Let's turn to page 41 of your report,
8 if we can. I think that's the last page.

9 A. (Witness complies).

10 Q. There are a number of cases here in
11 which you've been deposed or testified in the
12 last ten years. In each of those cases, did you
13 testify on behalf of the Plaintiffs, if you
14 remember?

15 A. Not in the Barbra Schlifer
16 Commemorative Clinic versus HMQ Canada case.

17 Q. What was that case about?

18 A. That was a challenge to Canada's
19 decision to get rid of its registration system.
20 And the Plaintiffs in that case were challenging
21 the decision they wanted it retained.

22 Q. So you worked in favor of the party
23 that wanted it thrown out?

1 A. For it to continue to be thrown out;
2 that is, the government of Canada.

3 Q. So in the Illinois Association of
4 Firearm Retailers case, the first one listed,
5 your testimony was on behalf of the Illinois
6 Association of Firearm Retailers?

7 A. Yes.

8 Q. And it was against a restriction on
9 gun ownership, correct?

10 A. Yes.

11 Q. In Heller versus the District of
12 Columbia, your testimony was on behalf of
13 Heller, correct?

14 A. Yes.

15 Q. And it was against the restrictions
16 imposed by the District of Columbia?

17 A. Yes.

18 Q. In Cook versus Hickenlooper, your
19 testimony was on behalf of Cook, right?

20 A. Yes.

21 Q. And it was against the restrictions
22 on large capacity magazines that were at issue
23 in that case?

1 A. Yes.

2 Q. In Wilson versus Cook County, your
3 testimony was on behalf of Wilson, right?

4 A. Yes.

5 Q. Is --

6 A. Well, I'm not sure. You would have
7 to refresh my memory. I've been involved in
8 more than one case in Cook County or Chicago. I
9 was temporarily involved in a case where it was
10 the City of Chicago who wanted me to testify.
11 And then it went nowhere, it didn't result in a
12 deposition or testimony. I think this was a --
13 I really just don't remember what that case was
14 about.

15 Q. Do you ever remember testifying in
16 favor of restrictions on gun ownership or large
17 capacity magazines?

18 A. No.

19 Q. In Kolbe versus O'Malley, the case
20 that we've talked about before this morning,
21 your testimony was on behalf of Kolbe, right?

22 A. Yes.

23 Q. And it was against the restrictions

1 in Maryland law on large capacity magazines in
2 certain types of firearms, right?

3 A. Yes.

4 Q. In Arie Friedman and the Illinois
5 State Rifle Association v. City of Highland
6 Park, your testimony was on behalf of
7 Dr. Friedman and Illinois State Rifle
8 Association?

9 A. Yes.

10 Q. And it was against the restrictions
11 on certain guns that were imposed in the City of
12 Highland Park, right?

13 A. Correct.

14 Q. In Tracy Rifle & Pistol versus Kamala
15 Harris, your testimony was on behalf of Tracy
16 Rifle & Pistol?

17 A. Yes.

18 Q. And it was against restrictions
19 imposed by the state of California?

20 A. Yes.

21 Q. And in Flanagan versus Becerra, same
22 thing, right?

23 A. Yes.

1 Q. [Redacted]

2 [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted]

3 Q. Have you ever shot an AR-15 type
4 rifle?

5 A. I don't believe so.

6 Q. Have you ever shot an AK-47 type
7 rifle?

8 A. I don't believe so.

9 Q. Have you ever used a large capacity
10 magazine?

11 A. Well, yeah, because anything over ten
12 rounds is large, so I've used guns that had a
13 15-round magazine.

14 Q. And is that in the context of
15 shooting at a rifle range?

16 A. It was at a range of some kind. I
17 don't think it was a rifle range.

18 Q. And then I assume it's fair to say
19 that you've shot semi-automatic weapons?

20 A. Yes.

21 Q. And you've changed magazines on semi-
22 automatic weapons?

23 A. Yes.

1 Q. Are you a member of the National
2 Rifle Association?

3 A. No.

4 Q. Have you ever been?

5 A. No.

6 Q. Do you remember who asked you to
7 participate in this matter as an expert?

8 A. Might have -- I assume it was Jay
9 Porter. Might have been.

10 Q. And do you remember who asked you to
11 participate as an expert in the Kolbe case?

12 A. I think it was someone else in the
13 same firm. Kolbe is the Maryland case?

14 Q. Yes.

15 A. I think it was somebody else in the
16 same firm.

17 Q. Do you know approximately how many
18 times you've worked with that firm? Is it more
19 than twice?

20 A. I don't recall whether there were any
21 other occasions besides those two.

22 Q. When you bill for your time and work
23 on this litigation, who do you send the bill to?

1 A. Bradley, Arant.

2 Q. And how much have you billed so far
3 in connection with this case?

4 A. I'd have to consult my records. I
5 don't know that I've billed anything yet.

6 Q. Do you have any sense of how many
7 hours you've put in on this case other than for
8 today's deposition?

9 A. Really, again, I would have to
10 consult my records.

11 Q. Are you aware that the National Rifle
12 Association is paying the costs in this case?

13 A. I was not aware, but I'm not
14 surprised.

15 Q. Why are you not surprised?

16 A. Because the National Rifle
17 Association has an interest in the issue and
18 they most definitely oppose these kinds of laws.

19 Q. What's your understanding of how fast
20 an average person can change a magazine on a
21 semi-automatic weapon?

22 A. Probably on the order of four
23 seconds.

1 Q. Is that about how fast you could
2 change one?

3 A. Yes, easily.

4 Q. Would it take longer in some cases if
5 the person changing the magazine was under
6 stress?

7 A. It's possible.

8 Q. Is it possible to take a new magazine
9 and fumble it in the process of putting it into
10 the gun?

11 A. It's possible.

12 Q. If that happened, it would take
13 longer than four seconds, right?

14 A. Yes.

15 Q. It could also take longer if the
16 person hadn't organized themselves to keep their
17 magazines in easy reach for the purpose of
18 changing them, right?

19 A. Yes.

20 Q. Meaning that if the magazine were not
21 in a belt or in a pocket that was easily
22 available, it would take longer to change the
23 magazine, right?

1 A. Under those circumstances, yes,
2 probably would.

3 Q. Could take far longer than two to
4 four seconds, right?

5 A. I don't know about far longer. I
6 mean, I could imagine it taking 10 or 20
7 seconds.

8 Q. And if the magazine were on a table
9 across the room, it could take even longer,
10 right?

11 A. It would have to be a pretty big room
12 to take more than 20 seconds to get to it.

13 Q. Are you familiar with a device called
14 a trigger crank?

15 A. No.

16 Q. Are you familiar with a device known
17 as a Binary AR trigger?

18 A. No.

19 Q. Are you familiar with a device called
20 an AutoGlove?

21 A. No.

22 Q. We talked about bump stocks earlier
23 and you mentioned that you had some very limited

1 sense of what a bump stock does, right?

2 A. That's very limited, yes.

3 Q. You're aware that at least the bump
4 stock is available to people who own semi-
5 automatic weapons for the purpose of speeding up
6 their rate of fire, right?

7 A. Yes.

8 Q. And you don't know how quickly the
9 rate of fire can be increased on a semi-
10 automatic weapon using the device, right?

11 A. Only that it can increase it to
12 approximately the rate of a full-auto weapon.

13 Q. And you base that on, at least in
14 part, on hearing the audiotape of the Las Vegas
15 incident?

16 A. Yes. Watching news video that had
17 audio to it and listening to that audio portion
18 of it.

19 Q. Have you looked at any other videos
20 that demonstrate the use of a device like a bump
21 stock?

22 A. No.

23 Q. In your work, have you ever studied

1 law enforcement practices for issuance of guns?

2 A. I don't understand the question.

3 Q. Do you know if law enforcement
4 agencies typically issue guns to individuals who
5 have not been trained on them?

6 A. You're talking civilians, then?

7 Q. I'm talking about law enforcement
8 officers.

9 A. Oh, police officers. I guess my
10 answer would be I don't think I'm qualified to
11 answer that question.

12 Q. In your opinion would it make sense
13 for law enforcement officers to be issued guns
14 that they haven't been trained on?

15 A. No.

16 MR. PORTER: Object to the form of
17 the question. You can answer.

18 A. No.

19 Q. Does it make sense for civilians to
20 be allowed to use guns that they haven't been
21 trained on?

22 MR. PORTER: Same objection, but you
23 can answer.

1 A. I'm not quite sure how to respond to
2 that. You tell me if this is responsive.

3 MR. PORTER: Great.

4 MR. KLEIN: Your lawyer is going to
5 explode.

6 MR. PORTER: Please, go ahead.

7 A. If you're getting at should people be
8 required to demonstrate prior training on the
9 particular firearm that they're intending to
10 acquire, I'd say that it's a procedure that's
11 subject to a lot of abuse, you know, because
12 basically, you can set the standards higher and
13 higher. You can, for example, on the one hand
14 require that people demonstrate their competence
15 in handling the gun by requiring them to go to a
16 range, but then, you know, making it illegal to
17 have firearms ranges anywhere near the person's
18 home, in which case you've made it very
19 difficult, albeit not impossible, to meet the
20 training requirements.

21 But if you're asking do I think it's
22 better to have training than not having
23 training, well, I'm an educator and I think more

1 education and training is good, so, you know.

2 MR. PORTER: Was that responsive?

3 THE WITNESS: You tell me.

4 MR. KLEIN: Neither you nor the
5 witness gets to ask me questions that I have to
6 answer during the deposition.

7 Q. So what term are you comfortable with
8 to describe the weapons that have been designed
9 as assault weapons in Massachusetts?

10 A. I guess I'm not comfortable with any
11 term because I'm uncomfortable with the
12 definition itself. It's obviously the statutory
13 term is assault weapons. But, you know, that
14 term does not define anything mechanical about
15 how the gun functions and, thus, why it might be
16 more dangerous than other guns. Instead it's a
17 label that applies to an arbitrary subset of
18 firearms that are not defined by either how
19 dangerous they are or how often they've been
20 used to commit violent crimes.

21 Q. So are you comfortable just calling
22 them assault weapons and you'll understand that
23 to mean weapons that are banned as assault

1 weapons under the Massachusetts definition?

2 A. Yeah, I would be comfortable as long
3 as you understand we're only talking about the
4 Massachusetts definition, and the Massachusetts
5 definition encompasses basically an arbitrary
6 subset of firearms.

7 Q. When you use the term "arbitrary" in
8 that context, would you consider that a legal
9 opinion?

10 A. No, it's a criminological opinion
11 because it's a matter of the guns don't have any
12 characteristics that are known to involve --
13 that advance a violent person's desire to do
14 violence with a gun. And that distinguishes the
15 weapons defined as assault weapons from those
16 not defined as assault weapons.

17 Q. So they have no effect on the use
18 that a criminal might make of them?

19 A. Well, they don't necessarily have
20 that kind of property, and the ones that are not
21 assault weapons lack that property. In other
22 words, it doesn't really distinguish the guns
23 with and without that dangerous property.

1 Q. So you just disagree with the
2 Massachusetts definition, right?

3 A. Well, I don't think it's an effective
4 way of identifying guns that are especially
5 dangerous or likely to be used in crime.

6 Q. That's your personal opinion or an
7 expert opinion?

8 A. It's my expert opinion.

9 Q. Are you aware that the Massachusetts
10 definition of assault weapons includes AR-15
11 pattern rifles?

12 A. Yes.

13 Q. Are you aware that it includes AK-47
14 pattern rifles?

15 A. Yes.

16 Q. What else are you aware that it
17 includes?

18 A. It includes what are claimed to be
19 duplicates or copies of those weapons, as well
20 as a variety of other specifically named models,
21 as well as weapons that have two or more
22 purportedly military style features, things like
23 flash suppressors, bayonet lugs and the like.

1 Q. And one of the opinions you have is
2 that there are other guns that have similar uses
3 for criminals that aren't banned, right?

4 A. Yes.

5 Q. Are you aware of any incidents in
6 which an AR-15 pattern rifle was used by a
7 civilian in self-defense in Massachusetts?

8 A. No.

9 Q. Do you have any knowledge of an
10 incident in which an AK-47 type rifle was used
11 by a civilian in self-defense?

12 A. No.

13 Q. Are you aware of any circumstances in
14 which an assault weapon that is within the
15 Massachusetts definition has been used by an
16 individual in Massachusetts in self-defense?

17 A. No.

18 Q. Are you aware of any circumstances
19 where any semi-automatic rifle was used by a
20 civilian in self-defense in Massachusetts?

21 A. No.

22 Q. Are you aware of any incident in
23 which a large capacity magazine was used by a

1 civilian in self-defense in Massachusetts?

2 A. No.

3 Q. Is it your opinion that anything that
4 is available to law enforcement should equally
5 be available to civilians?

6 A. No.

7 Q. And that applies to any guns
8 available to law enforcement?

9 A. I don't understand that question.

10 Q. Is it your opinion that if a gun is
11 available to law enforcement, it should also be
12 available to civilians?

13 A. Not necessarily, no.

14 Q. And is it your opinion that if a
15 large capacity magazine is available to law
16 enforcement, it should also be available to
17 civilians?

18 A. Not necessarily. Let me expand on
19 that. It doesn't matter -- it's irrelevant
20 whether law enforcement had it or not.

21 Q. But the fact that law enforcement has
22 it doesn't mean that civilians are also entitled
23 to the --

1 A. It wouldn't be sufficient to make it
2 okay for civilians to have it all by itself.

3 Q. Thank you. So you have written about
4 the question of why people support gun control;
5 is that right?

6 A. Yes.

7 Q. What is your conclusion on that
8 question?

9 A. Part of the -- the obvious part of
10 the explanation is that people believe,
11 correctly or not, that it will reduce gun
12 violence. So that's the instrumental or
13 utilitarian justification for the laws. But
14 that doesn't really explain much of the
15 variation across individuals and their opinions
16 about gun control.

17 In addition to that -- not instead of
18 but in addition, people's stereotypes about gun
19 owners have an effect; that is, the more of a
20 negative stereotype you have about gun owners,
21 the more likely you are to support stricter gun
22 laws.

23 Q. What about mass shootings? Does that

1 have an impact on people's beliefs about gun
2 control?

3 A. Temporarily. It's a transitory
4 effect. We know from public opinion polls that
5 support for gun control goes up in the weeks
6 after a highly-publicized mass shooting and then
7 after a few weeks, it declines to the
8 pre-shooting level.

9 Q. And does that mean if people knew
10 more about mass shootings because there was more
11 publicity about them that the effect would go
12 longer?

13 A. Well, it wouldn't be a matter of
14 knowing more about the shootings, it would be a
15 matter of being reminded of them more often and
16 more recent.

17 Q. Well, if we knew the level of
18 frequency of mass shootings because they were
19 all equally publicized, would that effect be
20 extended?

21 MR. PORTER: Object to form of the
22 question, but you can answer that.

23 A. It wouldn't be, you know, their

1 knowledge of how many there are. That wouldn't
2 have any effect on people's views. But hearing
3 about more of them via news media accounts more
4 often, I believe that would have a transitory
5 effect. And if you had that kind of account
6 every day to remind people of the issue, then
7 it's more likely to have a sustained effect in
8 elevating gun control support.

9 Q. Do you know -- you mentioned that you
10 rely on a website called shootingtracker.com?

11 A. Yes.

12 Q. And you mentioned that you use a
13 different definition of what a mass shooting is
14 than shootingtracker.com, right?

15 A. Yes.

16 Q. Do you have any sense of how many
17 mass shooting incidents shootingtracker.com has
18 catalogued for 2017?

19 A. No.

20 Q. Do you have any sense of how many
21 incidents of mass shootings shootingtracker.com
22 catalogued for 2016?

23 A. I believe it was in the hundreds.

1 Q. And for 2015?

2 A. Also in the hundreds, I believe.

3 Q. Have you ever looked at a website
4 called the Gun Violence Archive?

5 A. Yes.

6 Q. Is that a website similar to
7 shootingtracker.com?

8 A. I think that might be the same thing.
9 I think it might be the name of the organization
10 and the website URL is www.shootingtracker.com.
11 I think that's the same thing.

12 Q. And so you consider that a reasonably
13 reliable source of information about --

14 A. As far as I know.

15 Q. And you understand them to be using
16 the kinds of publicly available information that
17 you have also looked for in your research
18 yourself?

19 A. Yes. It's basically the same pool of
20 information everyone draws on.

21 Q. Including news reports?

22 A. Yes.

23 Q. Are you aware that in 2017 to date,

1 shootingtracker.com has identified 290 mass
2 shooting incidents?

3 A. It wouldn't surprise me.

4 Q. That's about one a day, right?

5 A. Yes.

6 Q. And in 2016, shootingtracker.com
7 identified 383 mass shooting incidents?

8 A. Yes.

9 Q. That's also about one a day, right?

10 A. Yes.

11 Q. In 2015 shootingtracker.com
12 identified 333 incidents; is that right?

13 A. That sounds plausible. It's in the
14 ballpark.

15 Q. Just short of one a day; is that
16 right?

17 A. Yes.

18 Q. And in 2014, they identified 273 mass
19 shooting incidents; is that about right?

20 A. Sounds plausible.

21 Q. So is it fair to say that, you know,
22 we're getting close to an average of one mass
23 shooting per day based on the incidents

1 identified by shootingtracker.com?

2 A. Yes, as defined by
3 shootingtracker.com.

4 Q. Using their definition which is, as I
5 understand it, four or more deaths or injuries,
6 right?

7 A. Yes.

8 Q. Let's turn to page 2 of your report.

9 A. (Witness complies).

10 Q. I want to ask you some questions
11 about the National Self-Defense Survey that's
12 referenced in the first full paragraph.

13 A. Yes.

14 Q. That's research that you conducted in
15 1994, correct?

16 A. Correct.

17 Q. Or that was published in 1994.
18 Perhaps some of the research was done earlier.

19 A. No. The article was published in
20 '95. The survey was conducted in spring of '94,
21 and the reference period, the period that
22 respondents were asked about was roughly '93,
23 mostly '93 was the past twelve months and the

1 past five years. So the past year estimates
2 were -- pertained to, for the most part, in
3 1993.

4 Q. So that's research that's close to 25
5 years old at this point?

6 A. Correct.

7 Q. Have you ever attempted to update it?

8 A. I have.

9 Q. And have you published any
10 information based on the updated --

11 A. No.

12 Q. -- work that you did? Why not?

13 A. I haven't yet written it up and
14 submitted it to a professional journal.
15 Actually, no, I stand corrected. I submitted
16 it, but then they asked for revisions and I
17 haven't provided the revisions. So, yes, it was
18 submitted, but it's still in play, so to speak.

19 Q. So you have a draft of that article?

20 A. Yes.

21 Q. Did you provide it to counsel in this
22 matter?

23 A. No.

1 Q. Is it also based on a nationwide
2 survey?

3 A. Yes.

4 Q. And when did you conduct that survey?

5 A. It was probably about five years ago,
6 let's say. Maybe somewhere around 2012.

7 Q. So in the intervening six years,
8 you've been pulling it together for publication?

9 A. I haven't been doing anything with it
10 because I've been busy with other things,
11 including completing a book on a totally
12 different subject, the Effect of Punishment on
13 Crime.

14 Q. And remind me, in the work that you
15 published in 1994 in which there was a survey of
16 about 5,000 adults, how were those adults
17 identified?

18 A. I published it in '95, just to
19 refresh your memory.

20 Q. Thank you.

21 A. Not '94. They were -- they were
22 whoever answered the phone when we dialed --
23 when we randomly dialed telephone numbers that

1 were randomly generated. This is where you take
2 known area codes and prefixes; that is, the
3 first six digits of a telephone number --
4 actually the first seven digits, and then you
5 randomly generate the last digits. And so this
6 generates a random sample of telephone numbers
7 so you can get at everybody in the U.S. that has
8 a telephone, which was well over 95 percent of
9 the population. And in those days, cell phones
10 were uncommon, so these were basically land line
11 phones. And whoever answers, we establish that
12 the person is an adult, age 18 and over. And if
13 they agree to the interview, then that's who was
14 included in the survey.

15 Q. Were there people who didn't agree to
16 the interview?

17 A. Yes.

18 Q. What were they told about the purpose
19 of the interview before they agreed or didn't
20 agree?

21 A. Oh, they didn't know anything about
22 the subject matter.

23 Q. So there was just a request for

1 someone to participate in an interview without
2 any identification of the subject matter?

3 A. That's correct. I mean, the way we
4 did it was -- you know, one standard procedure
5 that survey researchers, at least telephone
6 surveyors did was you just breeze right into the
7 first question. And so, you hopefully encourage
8 people to participate by the fact that they're
9 practically already in it anyway. But people
10 who don't want to participate are still free to
11 say, you know, sorry, I don't want to do this or
12 I don't have time to do it.

13 Q. If someone --

14 A. And the first question didn't reveal
15 what the topic of the survey was. It was a
16 throat clearing sort of a question just to kind
17 of get things going.

18 Q. What was the first question, if you
19 remember?

20 A. It was something about whether or not
21 they thought crime was a big problem in their
22 area or whether they thought it was getting
23 worse that's sort of an easy to answer opinion

1 question. But nothing about guns, gun
2 ownership, defensive gun use, self-protective
3 actions or anything like that, it was just
4 something about crime is all they knew at that
5 point.

6 Q. And if someone started the survey but
7 didn't complete it, declined to continue at some
8 point during the survey, what happened to their
9 results?

10 A. Well, normally they just would be
11 tossed out. They didn't have any effect on the
12 results. Because if they told us that in a
13 general way they thought that they had had a
14 defensive gun use, as they defined it, unless we
15 got through the rest of the questions we
16 wouldn't know if their understanding was correct
17 or whether it qualified as a defensive gun use,
18 so it just wouldn't be used. We didn't know one
19 way or the other. I mean, we knew they were
20 claiming to have had what they considered to be
21 a defensive gun use, but that's all we knew.
22 And so they would simply be tossed out.

23 Q. And the same thing if someone didn't

1 get to the end after declining to identify
2 defensive gun use, you would toss that out?

3 A. I think we had some criterion as to
4 how far they had to go through. But if they
5 denied having had a defensive gun use, well,
6 there's nothing further that we needed to know.
7 I mean, we didn't have to ask, well, what kind
8 of incident did you not have? We had everything
9 we were going to need to know. And so, that's a
10 person who would be classified as a
11 non-defensive gun user.

12 Q. So only the people who
13 self-identified as defensive gun users went
14 through the entire set of survey questions,
15 right?

16 A. No. Well, yes, that's correct.
17 Because they're the only ones who had a
18 defensive gun use to describe. And some of the
19 questions pertained to details of the defensive
20 gun use, so certainly those questions would not
21 be asked of anyone else.

22 Q. So what was the trigger question that
23 you treated as yes or no for a defensive gun

1 use?

2 A. In the past five years, have you or
3 somebody in your household used a gun for
4 self-protection, even if it was not fired, to
5 protect against crime, something like that.

6 Q. And so only if they answered yes to
7 that question did they get the final set of
8 questions, correct?

9 A. Well, they weren't the final ones.
10 But yes, then they would be asked additional
11 questions asking for the details of the event
12 that they described as a defensive gun use.

13 Q. So in order to have that set of
14 survey questions asked, they had to have
15 identified themselves as having used a gun for
16 defensive purposes, whether or not it was in
17 connection with a crime?

18 A. No. It would have had to be in
19 connection with a crime, otherwise a yes
20 response wouldn't have been correct. Because we
21 asked about protection against crime.

22 Q. So if someone identified as having a
23 defensive gun use at that time but then later

1 acknowledged that they were mistaken about
2 whether a crime was being committed on them, how
3 was that treated?

4 A. Well, they wouldn't acknowledge that
5 they had made a mistake or whatever; rather, we
6 would ask them a series of questions to
7 establish what kind of crime they thought was
8 being committed against them. And if they
9 either described something that wasn't a crime
10 or they couldn't describe it at all, you know,
11 maybe they would respond to some vague threat
12 that was only in their mind, then those
13 subsequent questions would establish we're not
14 going to classify that as defensive gun use.

15 Q. And did you allow them to
16 self-characterize the experience that they
17 believed was criminal in connection with their
18 defensive gun use?

19 A. Self-characterize how?

20 Q. By telling you what happened in their
21 own words?

22 A. Yes. But then interviewers would
23 have to prompt them to get -- if it didn't nail

1 down the details that we needed, then they would
2 be asked other questions that would
3 unambiguously establish the details, including
4 whether or not they could articulate what kind
5 of crime they thought was being reported. So,
6 yes, they would state in their own words the
7 crime that they thought was being committed.
8 But then our interviewers would have to record
9 that as falling into these categories, crime
10 categories or not being a crime at all as far as
11 we could tell.

12 Q. So if someone woke up in the night,
13 for example, and they heard a noise and they
14 went and they reached for their gun and searched
15 the house and told you that they had scared the
16 intruder off, that would be accepted at face
17 value?

18 A. No.

19 Q. So what other questions would get at
20 whether an intruder was actually scared off?

21 A. Because in that case, as you've
22 described it, there was no confrontation and so
23 they couldn't confirm that there was actually a

1 burglar or intruder or whatever, in which case
2 you don't know it's a crime, in which case we're
3 right back to the point where we don't have
4 affirmative reason to believe that it was a
5 crime.

6 Q. So all of the 1.3 percent of
7 responses that you identified as involving a
8 defensive gun use involved a confrontation of
9 some kind?

10 A. Yes. And we partly established that
11 by asking them how many offenders there were.
12 Well, if there's no confrontation, obviously you
13 couldn't say that. If you were just a guy who
14 investigated a noise at night but never saw
15 anyone, then you wouldn't have any idea how many
16 there were. So if somebody said, well, we don't
17 know, I don't know, I never saw them, then we're
18 right back to, well, as far as we know, it's not
19 a crime they were defending against.

20 Q. So they would not be included in the
21 1.3 percent of the survey?

22 A. They were not.

23 Q. So in the context of interview of

1 5,000 people, the number of respondents that
2 you're reviewing here who reported a defensive
3 gun use is under 600 -- under 60, right?

4 A. No.

5 Q. Sorry, let's get the math right. I
6 apologize if I did it wrong.

7 A. I think there were 194 who said they
8 had had a defensive gun use where as far as we
9 could tell, it was a legitimate claim. And that
10 was in reference to the five-year recall period.
11 We asked them, you know, in the past five years.
12 Among those who said it was in the past twelve
13 months, there were 66 of those.

14 Q. Now, you didn't ask those 194 people
15 what type of gun they used in these incidents,
16 right?

17 A. Yes, we did. We established the
18 broad categories of firearms.

19 Q. Whether it was a rifle or a pistol --

20 A. Yes.

21 Q. -- or is a shotgun?

22 A. Yes.

23 Q. Are those the broad categories you

1 used?

2 A. Yes.

3 Q. But you wouldn't know whether or not
4 they were a gun that's been defined as an
5 assault weapon in Massachusetts, right?

6 A. That's correct.

7 Q. You wouldn't know whether the gun was
8 an AR-15 pattern rifle, for example?

9 A. Yes, that's correct.

10 Q. You wouldn't know whether the gun was
11 an AK-47?

12 A. Right.

13 MR. PORTER: What do you think about
14 a five-minute break?

15 MR. KLEIN: I think that's fine. Let
16 me just make sure I've gotten to the end of this
17 series of questions.

18 MR. PORTER: Sure.

19 Q. Do you happen to remember what
20 percentage of the individuals who reported a
21 defensive gun use reported that they had used a
22 rifle?

23 A. No.

1 Q. Is that in the study?

2 A. Yes.

3 Q. And the same question for a handgun?

4 A. Yes.

5 Q. So when you did the work to survey
6 people more recently, did you use the same
7 methodology you used in the early '90s?

8 A. No. It was really no longer feasible
9 to do a telephone survey. Basically, the advent
10 of cell phones screwed things up.

11 Q. Because you can't identify random
12 sample of telephone numbers?

13 A. Yeah, you can. But, you know, it's
14 getting people to answer a number they've never
15 seen before. And people are not -- they're not
16 going to undergo the cost of paying for an
17 incoming call from some number that they don't
18 know.

19 Q. So what survey methodology do you
20 use?

21 A. It's an internet survey. An internet
22 survey, one way it can be done scientifically so
23 that you get a probability sample is you make

1 use of previously selected panels of respondents
2 who were selected to be representative of the
3 national population. And then in effect, the
4 agency that have gathered those panels, have
5 selected those panels, will allow researchers to
6 select a subset of them to interview them about
7 whatever topics those researchers happen to be
8 in.

9 And the way they gather it
10 originally, their original panels of respondents
11 is they use the U.S. Postal Service's delivery
12 sequence files which basically have every
13 address to which mail can be addressed to be
14 delivered. And the residential portion of that,
15 all the residential addresses, they basically
16 encompass the full population other than
17 homeless people. And so they contact people, a
18 probability sample of addresses, they send mail,
19 they solicit people to participate in their
20 panels. And the incentive for them is they get
21 a free computer, laptop or notebook type
22 computer and they get free internet access. But
23 they're obliged to participate in a minimum

1 number of surveys each month.

2 And so somebody like me comes along
3 and says, well, okay, I want to do a sample, I
4 want a portion of that pool, which is very
5 large. I mean, they might have 20,000 people
6 total. You take a random sub-sample of that
7 panel, so they're a representative of the
8 national population but you contact them through
9 the internet. You provide a questionnaire
10 that's on the website that they go to. They're
11 instructed via e-mail to go to this website,
12 there's a link that they can click on and then
13 they go to that website and answer the
14 questions.

15 Q. Do you consider that methodology to
16 be reasonably scientific and to yield results
17 that you can rely on?

18 A. Yes, it's state-of-the-art now.

19 Q. And you prepared a questionnaire for
20 that group of people in connection with your
21 update to the 1994 survey?

22 A. Yes.

23 Q. And did you use the same questions

1 that you used in the early '90s?

2 A. The initial question, the screener
3 question, as technoheads refer to it, is I think
4 the same, it's exactly the same. You know, that
5 stuff about in the past five years, have you or
6 a member of your household blah-blah-blah. But
7 I might have asked additional questions about
8 the details of the incidents for those who
9 reported a defensive gun use or claimed a
10 defensive gun use.

11 Q. Do you have a copy of that survey
12 with you in your computer today?

13 A. Yes. Well, in my computer? No, I do
14 not.

15 Q. Why not?

16 A. Because it has nothing to do with
17 this case. I'm making no use of the information
18 generated by that survey.

19 Q. Is it not on your computer or is it
20 something that you believe has nothing to do
21 with this case?

22 A. It's not on this computer, and it's
23 not in any way providing a foundation for the

1 opinions I've expressed in this case.

2 Q. And the results that you achieved,
3 the basis for the article that you prepared that
4 hasn't yet been published, are those also no
5 part of the opinions in this case?

6 A. Could you repeat that, please?

7 Q. The results that you obtained from
8 the survey that you ran, are those also no part
9 of your opinions in this case?

10 A. They form no part of the basis for my
11 opinions in this case.

12 Q. Do you have a copy of the article
13 that you prepared that has not yet been
14 published on that computer in front of you
15 today?

16 A. No.

17 Q. And why is that?

18 A. Because it's not a part of the
19 foundation for my opinions in this case.

20 Q. It's not your general work computer?

21 A. No, it's not. This is basically
22 something I bring along when I'm traveling.

23 MR. KLEIN: Can we take a break?

1 (Brief recess was taken from
2 11:16 a.m. to 11:57 a.m.)

3 Q. So before the break, we were talking
4 about an additional survey that you have done on
5 defensive gun use and an article that you have
6 prepared but haven't published based on that
7 survey result. Do you remember that?

8 A. Yes.

9 Q. I am asking for a copy of both the
10 survey and the draft article because it bears on
11 the issues you've opined. In fact, it bears on
12 a central issue in your opinion. You've told me
13 that it's not available to you as you sit here.

14 MR. KLEIN: And my understanding is
15 that the Plaintiffs are not going to produce
16 those two items?

17 MR. PORTER: That's right. Not only
18 do we not have a copy to produce either here or
19 else wise, Dr. Kleck doesn't base any of his
20 opinions in his expert report in this case on
21 that study or the analysis, and he does not rely
22 upon or disclose unpublished academic material.
23 He wants to show these as to be academically

1 defensible.

2 MR. KLEIN: And our view is that that
3 material is central to being able to examine
4 this witness about his opinions, including on
5 the question of whether they have changed based
6 on his additional work on this issue.

7 MR. PORTER: And my response to that
8 is he's your witness, you can ask him whatever
9 you want. But --

10 MR. KLEIN: It's hard to ask him
11 questions about a survey and an article and
12 conclusions that he's apparently put to paper
13 that I haven't seen.

14 MR. PORTER: I understand that.

15 Q. All right. Just a few more questions
16 with respect to that work. Is there anybody
17 else who worked with you on that project?

18 A. Well, the people of the survey firm.
19 Nobody else worked on the development of
20 questionnaire, but other people -- I mean,
21 you've obviously got to have people who put the
22 questionnaire on the website, you have people
23 who are in the business of selecting that

1 representative panel of people and so on.

2 Q. Do you have co-authors on the paper
3 that you prepared?

4 A. No.

5 Q. Did you have research assistants
6 working on it?

7 A. No.

8 Q. Have you talked about the results in
9 connection with that survey in any forum?

10 A. I think I have. I think I might have
11 discussed it at a conference possibly.

12 Q. What conference was that?

13 A. I couldn't tell you in a million
14 years.

15 Q. Did you prepare a PowerPoint in
16 connection with the presentation that you made?

17 A. No.

18 Q. Did you have any other presentation
19 materials?

20 A. Probably -- given my limited
21 technical skills, probably paper handouts.

22 Q. Do you have copies of the paper
23 handouts that you would have made?

1 A. I would have a digital copy of those
2 paper things.

3 Q. Do you remember if they included any
4 of the results or outcomes?

5 A. Yes.

6 Q. Did they?

7 A. Yes.

8 Q. Then you don't remember what
9 conference or forum the presentation you made
10 was in?

11 A. No.

12 Q. Do you remember any of the folks that
13 attended?

14 A. No.

15 Q. Do you remember, were there other
16 presenters on the panel?

17 A. No.

18 Q. Have you ever talked about these
19 survey results in one of your classes?

20 A. I don't think so, no.

21 Q. Have you ever published any work that
22 mentions or discusses the fact that you've done
23 this additional work?

1 A. Not that I recall.

2 Q. Now, you've told me that you did not
3 consider the survey results in connection with
4 the report that you provided in this case. Why
5 not?

6 A. It just didn't occur to me. I didn't
7 give it a moment's thought. It's kind of hard
8 to explain why you did not do something or why
9 something didn't occur to you. You know, the
10 information I needed to draw those conclusions
11 was already available to me without that survey.

12 Q. So just to be clear, on page 2 of
13 your report, you discuss your 1995 publication
14 on defensive gun use. And you didn't consider
15 it relevant that you had additional, more recent
16 survey data to the question of instances of
17 defensive gun use?

18 A. I really didn't think about it one
19 way or another.

20 MR. KLEIN: I just want to add to the
21 list of things that we're requesting to complete
22 this deposition the presentation material that
23 was used at the conference at which Dr. Kleck

1 discussed these results.

2 MR. PORTER: Okay. That's not in
3 your deposition notice. You asked him to bring
4 his file for the things that he relied upon
5 pursuant to making this opinion. So you're
6 asking for an additional extrinsic item now.

7 MR. KLEIN: I would say we have asked
8 for it, but I don't think we need to have that
9 fight on the record.

10 MR. PORTER: That's fine.

11 Q. Have you ever studied the types of
12 weapons used in mass shootings?

13 A. I don't know as I'd call it study.
14 I've noted from media counts how many weapons,
15 you know, and maybe generally what types of
16 weapons without reference to specific models or
17 the individual characteristics that would
18 establish whether they fit a statutory
19 definition of assault weapons. But yeah, I
20 mean, I've -- just for example, in the large
21 capacity magazine research, I noted how many
22 guns the offender was using without reference to
23 details about what those guns were.

1 Q. Do you happen to know what type of
2 gun was used in the Columbine High School
3 shooting?

4 A. Multiple gun types. But as I sit
5 here, I couldn't recall what they were.

6 Q. Do you happen to know what type of
7 guns were used at the Aurora movie theater?

8 A. Again, I noted that there were
9 multiple guns, but I don't recall what exactly
10 the types of guns used were.

11 Q. How about at San Bernardino?

12 A. No.

13 Q. Newtown?

14 A. No.

15 Q. How about in the Pulse Nightclub
16 shooting?

17 A. No.

18 Q. And when you say no in response to
19 each of those questions, that means you don't
20 know?

21 A. That's correct.

22 Q. You've never published on the
23 question of whether the guns in any mass

1 shootings were among the guns that are included
2 in the Massachusetts assault weapons ban?

3 A. I haven't done any original research
4 on that. But in writing on the general topic, I
5 might well have cited other people's information
6 on that topic.

7 Q. In what context would you say you've
8 done that?

9 A. Well, for example, in targeting guns
10 there's a chapter that concerns so-called bad
11 guns. Among other things there was a section on
12 assault weapons, and that addresses the issue of
13 how often assault weapons are used in violent
14 crime. And so I would cite other people's
15 information on that topic, for example, a police
16 department's report or the Bureau of Alcohol,
17 Tobacco and Firearms report on trace data on
18 types of guns used in crimes. So you can
19 describe it as my re-research. It's just making
20 use of other people's information.

21 Q. In your work on defensive gun use,
22 how did you treat situations where two people
23 were engaged in a dispute and both of them drew

1 a gun?

2 A. If we thought -- if one person, the
3 person we were talking to believed that they
4 were attacked or threatened by the other person,
5 then -- and they used a gun, meaning they either
6 attacked or threatened their adversary with it,
7 the fact that it was a dispute that led to that
8 conflict is irrelevant. I mean, it simply
9 wouldn't enter into the decision as to whether
10 or not it would qualify as a defensive gun use.

11 Q. I'm not sure I followed your answer.
12 Would you include that as a situation in which
13 the gun use was defensive?

14 A. If it otherwise qualified, yes.

15 Q. And is it your understanding that
16 there are disputes where both parties believe
17 the other party drew first, right?

18 A. I'd say very, very rarely. In fact,
19 offhand, I don't know of any specific instances
20 of that.

21 Q. And do you --

22 A. What we found -- I mean, to complete
23 the answer. What we found is that incidents in

1 which people claim to have used their gun
2 defensively almost never involve the other
3 party, whatever their character, having and
4 using a gun; that is, it not only wasn't a
5 shootout, it wasn't even two people, as you put
6 it, drawing their weapon, the other party just
7 didn't have a gun.

8 And it's kind of analogous to when
9 the offender has a gun, it's rare the victim has
10 a gun. It's one party or the other. It's a
11 very asymmetrical situation almost all the time.
12 So whether it's dispute related or not,
13 situations where both parties had a gun are
14 really, really rare, only a negligible fraction
15 of all the defensive gun uses that we counted.

16 Q. So what you're saying is that in most
17 of the situations where someone reported
18 defensive gun use, a person that they were
19 defending against did not have a gun?

20 A. Yes.

21 Q. And did you -- in the context of your
22 evaluation of defensive gun use, did you
23 evaluate whether the circumstances of that

1 defensive gun use would constitute a legal
2 defense of self-defense?

3 A. No.

4 Q. So it's possible --

5 A. Well, let me complete the answer.

6 Only to the extent that the things we did ask
7 about might be relevant to that judgment, but we
8 weren't making that judgment. I mean, we
9 weren't qualified to make legal judgments.

10 Q. So it's possible that at least some
11 of the defensive gun use was in situations where
12 the person who claimed to be using the gun
13 defensively didn't have a right to self-defense?

14 A. It's possible, yes.

15 Q. Go to page 3 of your report.

16 A. (Witness complies).

17 Q. I'm looking at the sentence in the
18 last paragraph, and I'll read it so I can ask
19 you questions about it. It says, to the extent
20 that Massachusetts lawmakers intend for a ban on
21 commonly used magazines to reduce the number of
22 homicides and violent crimes committed in the
23 Commonwealth, my research has found no such link

1 and none can be found in the literature. So do
2 you have a basis for the belief that that's what
3 the Massachusetts Legislature has intended?

4 A. I would say it's simply something I
5 assumed as a matter of common sense. I mean, I
6 assumed that the lawmakers weren't doing it just
7 for the sake of irritating gun owners, but
8 rather had an intention of that they wanted to
9 in some way reduce violence.

10 Q. And I notice in that sentence you
11 don't include injuries, just homicides and
12 violent crimes, right?

13 A. I would say that's inadvertent. I
14 mean, I would be perfectly happy if the word
15 "injuries" were added in there.

16 Q. Isn't it possible that the
17 Massachusetts Legislature was also considering
18 the possibility that use of certain weapons
19 could lead to injuries to innocent bystanders in
20 shooting incidents?

21 A. Possibly, yes.

22 Q. Which wouldn't necessarily be
23 criminal in nature, right?

1 A. Possibly.

2 Q. And you say that none can be found in
3 the literature. Is there literature that shows
4 that a ban on large capacity magazines increases
5 violent crimes?

6 A. I don't know of any research that's
7 even addressed the issue. So the answer, I
8 guess -- the short answer would be no.

9 Q. Is there any literature that shows
10 that a ban on large capacity magazines reduces
11 the success of defensive gun use?

12 A. Well, only indirectly in the sense
13 that we know something about defensive gun use
14 and we know something about what a ban on large
15 capacity magazines would imply. It would
16 necessarily imply and it intended to result in
17 the inability of whoever the user is, whether
18 offender or defender, to fire large numbers of
19 rounds without reloading.

20 Q. So you're saying you infer that
21 connection. But I asked you a different
22 question. Is there literature that shows that a
23 ban on large capacity magazines reduces the

1 success of defensive gun use?

2 A. No. My answer would be the same. To
3 my knowledge there's no research on the point
4 one way or the other.

5 Q. The last sentence of the paragraph
6 says, it is law abiding citizens who will
7 primarily be impacted by the restriction, being
8 deprived of sufficient ammunition capacity to
9 assure themselves of being able to fend off
10 attackers. Is there support in the literature
11 for that sentence or that is based on the
12 inference that you shared with me just now?

13 A. Well, the first premise underlying
14 that statement is that it's law abiding citizens
15 who will primarily be impacted, meaning who are
16 most likely to obey the law and do without the
17 forbidden large capacity magazines. And I guess
18 you could say that's an assumption, but it's
19 probably an assumption that virtually nobody
20 would dispute. It's virtually a tautology that
21 law abiding people obey the law more than
22 criminals do. I mean, it's what makes criminals
23 criminals; they don't obey the law.

1 Q. You --

2 A. And there's no earthly reason why
3 bans on large capacity magazines would be an
4 exception.

5 Q. But you opined here that you need
6 that large capacity magazine to assure
7 themselves of being able to fend off attackers.
8 And you told me that there's no literature that
9 supports the position that there are incidents
10 or has ever been an incident where a large
11 capacity magazine would have successfully fended
12 off an attack that otherwise couldn't have been
13 fended off?

14 A. Yes. But there is research on
15 related questions such as, well, how often do
16 people manage to hit what they shoot at in
17 real-world combat circumstances. That's
18 relevant because it's relevant to how many shots
19 you would have to fire in order to stop an
20 offender who could only be stopped by shooting
21 them, fatally or non-fatally. And there's
22 research showing how many crime victimizations
23 involve multiple offenders. And there's

1 hundreds of thousands of incidents that occur
2 each year, violent crime incidents, where the
3 victims are facing multiple adversaries,
4 multiple offenders.

5 And so we know two things from prior
6 research. It's not exactly directly a test of
7 the proposition that a ban on large capacity
8 magazines would impair people's ability to
9 defend themselves, but it's a logical inference
10 from two other points that have been established
11 in research; people don't hit what they aim at
12 more than one in three times, optimistically.
13 Some research indicates one in seven. And
14 number two, the fact that they often face
15 multiple offenders. So it wouldn't be
16 sufficient to just stop one offender to prevent
17 the victims from being harmed.

18 Q. So can you point me to even one
19 incident where you're aware that the victim of a
20 crime involving multiple offenders used a large
21 capacity magazine to stop that crime?

22 A. No, because I don't know of any
23 research that's made an effort to find that sort

1 of thing out.

2 Q. And can you point me to even one
3 incident where a large capacity magazine was
4 necessary for self-defense because some
5 percentage of shots missed their target?

6 A. It sounds like a compound question.
7 Do I know of crime incidents where it took large
8 numbers of rounds to stop the offender? Yes.
9 But do I know why that is and the role that not
10 having a large capacity magazine in it played?
11 No. Because, again, as far as I know, there's
12 no research on that.

13 MR. KLEIN: Could you read that
14 answer back, please? Thank you.

15 COURT REPORTER: The answer or the
16 question?

17 MR. KLEIN: The answer is fine.

18 (The desired portion was read by the
19 court reporter)

20 Q. You said that you're aware of a large
21 number of incidents where a large number of
22 rounds were necessary to stop the offenders?

23 MR. PORTER: Object to the form of

1 the question.

2 Q. Maybe I have the specific language
3 wrong. You said you're aware of incidents in
4 which it took a large number of rounds to stop
5 the offenders?

6 A. (Witness nods head).

7 Q. Can you tell me which incidents
8 you're referring to?

9 A. The incidents that are referred to in
10 the source cited at the end. Actually, I'm
11 sure -- actually, it's not cited at the end.
12 It's a compilation of research on the police use
13 of deadly force. Of course, police are not even
14 supposed to draw their weapons, never mind
15 firing them unless it's necessary to prevent a
16 crime or other harm from occurring.

17 Q. That's specifically a study of police
18 use of --

19 A. Of deadly force, correct. And it's
20 sort of a limiting situation if you make the
21 assumption that the marksmanship under stressful
22 circumstances of civilians would be even worse
23 and, thus, they would need even more rounds than

1 the police officer did.

2 But the title of the book, I believe,
3 is Deadly Force and it has a subtitle, too. And
4 it's based on a large number of reports usually
5 done by individual police departments on
6 shooting incidents. And they would compile
7 information on, among other things, how many
8 times the officer fired, how many times their
9 rounds landed on the offender and so on.

10 Q. Are you aware of incidents where
11 civilians have used a large number of rounds to
12 stop a criminal incident?

13 A. No.

14 Q. Is it true that police engage in
15 activities that civilians don't participate in
16 in terms of their role in stopping crime?

17 A. Certainly.

18 Q. And that would include, for example,
19 assaults on criminal hideouts, for example?

20 MR. PORTER: Object to the form of
21 the question. You can answer.

22 A. Yes. That would be something on rare
23 occasions police do that civilians do not.

1 Q. Rescue of hostages, for example?

2 A. Yes.

3 Q. And that would make police much more
4 likely to face multiple criminal offenders than
5 a civilian?

6 MR. PORTER: Object to the form of
7 the question. You can answer.

8 A. Yes. In those rare circumstances,
9 that would be true, that's likely to be true.

10 Q. On page 4 of your report there's the
11 sentence, in 63 percent of the incidents, the
12 officers failed to hit even a single offender
13 with a single round.

14 A. Oh, that's where it's cited. It's in
15 footnote 3. That's the one I was referring to
16 in my last response.

17 Q. So that's your support for --

18 A. Yeah.

19 Q. -- that particular statement?

20 A. Yeah. It's titled Deadly Force, What
21 We Know.

22 Q. And that's a report from 1993?

23 A. Correct.

1 Q. And are you aware of whether law
2 enforcement organizations have responded to that
3 20-year-old study with additional training of
4 officers on the use of their guns?

5 A. No, I'm not aware.

6 Q. Do you know if that study has been
7 updated in the last 25 years?

8 A. I don't believe so.

9 Q. And are you aware of whether the
10 author studied what happened to the rounds that
11 missed their target?

12 A. No.

13 Q. They hit something, right?

14 A. Possibly an inanimate object, but I
15 have no idea. The report just didn't address
16 it.

17 Q. And possibly to an animate object,
18 right?

19 A. Possibly.

20 Q. And that animate object might have
21 been an innocent bystander, right?

22 A. Could be.

23 Q. And in the case where civilian

1 victims of crime use a gun to defend themselves,
2 they often miss their targets more often than
3 they hit them, right?

4 A. Yes.

5 Q. And we don't know anything about what
6 happens to the bullets that miss their target,
7 right?

8 A. That's correct. We don't know one
9 way or the other.

10 Q. It's possible that in some cases
11 they're hitting innocent bystanders as well?

12 A. Well, it's possible. Although, we do
13 have a little bit of information on that.
14 Because people have studied, you know, how often
15 it happens that innocent bystanders are shot,
16 regardless of the nature of the original
17 shooting, and the research indicates it's
18 extraordinarily rare. So this could be either
19 two criminals shooting it out or police and a
20 civilian criminal or a civilian and a criminal.
21 And so, we don't know specifically about the
22 subset of cases where civilians were engaging in
23 self-defense, we just know that the result

1 you're discussing where a human is hit by a
2 stray round is extremely rare.

3 Q. If you would go to page 6.

4 A. (Witness complies).

5 Q. The statement, it takes two to four
6 seconds for even a minimally experienced shooter
7 to eject an expended magazine from a semi-
8 automatic gun, insert a loaded magazine and make
9 the gun ready to fire. What's your source for
10 that statement?

11 A. I think that -- let's see. Oh, okay.
12 I see what you're referring to. One source
13 would be testing it out myself. I'm not a
14 particularly experienced shooter, but I've had a
15 friend use a stopwatch to time me as to how long
16 magazine changes take place. Also, I've
17 participated or witnessed action shooting events
18 where people who are experienced shooters will
19 -- you know, they'll have it timed how long a
20 magazine change is using an acoustic device
21 which can hear the last round fired from the
22 previous magazine and then it hears the
23 magazine -- the first round fired from the next

1 magazine so the magazine change occurred within
2 that interval. So you have extremely accurate
3 times right down to the tenth and even the
4 hundredth of an inch how long that span was.

5 And also there's internet video
6 footage, like on YouTube, where it will show you
7 magazine changes. And they'll have a clock at
8 the bottom running, showing from the time the
9 guy ejects the previous magazine to the time he
10 inserts the next magazine and makes the gun
11 ready to fire. And that also confirms that it's
12 in a two to four second range.

13 Q. And in that context, the people who
14 are changing magazines are essentially
15 competitors and they have an interest in
16 changing them as quickly as possible, correct?

17 A. Well, they're certainly experienced
18 shooters. I mean, in some of those examples I
19 was citing, yes, they're competitors; in other
20 cases, it's just somebody demonstrating it.

21 Q. But they're all people who have a
22 great deal of experience changing magazines?

23 A. There are such people in the world.

1 Q. And it's possible that there are
2 criminals who don't have the same level of
3 experience changing magazines?

4 A. It's possible.

5 Q. And it's possible that there are
6 criminals who don't plan well enough to maximize
7 the conditions under which their magazines can
8 be changed, right?

9 A. Certainly a logical possibility.

10 Q. Meaning that it might take them
11 longer, and perhaps even a good deal longer to
12 change a magazine, right?

13 A. Well, I don't know about a good deal
14 longer, but one can certainly imagine them
15 taking longer than two to four seconds.

16 Q. And even if it's just two to four
17 seconds, there's a possibility that people can
18 use the additional time between shots while the
19 magazine is being changed in order to escape,
20 right?

21 A. It's a very farfetched possibility
22 because, of course, we have real-world
23 experience on whether people actually do that

1 when they're in the midst of mass shooting
2 incidents whether bystanders do, in fact,
3 intervene or make some effort to stop the
4 shooter while they're making that kind of a
5 magazine change. So all we know is that
6 regardless of whether there's some hypothetical
7 potential, people don't actually do it.

8 Q. It's possible, for example, if the
9 criminal is fumbling the magazine, that people
10 can exit a room where the shooting is taking
11 place, right?

12 A. Well, they could have done that
13 whether or not he's fumbling the magazine. The
14 issue is whether or not they have any extra time
15 to do that. And, yeah, they might have some --
16 you know, a second or two of additional time to
17 do that.

18 Q. Well, assuming a two to four second
19 magazine change, why don't they have two to four
20 seconds?

21 A. Well, partly because humans are not
22 robots. They have to have a certain amount of
23 time to recognize that's what the person is

1 doing and --

2 Q. What if they're already running away,
3 Dr. Kleck?

4 MR. PORTER: Object. Hold on. Let
5 him answer your question.

6 MR. KLEIN: I thought he was done. I
7 apologize.

8 A. That's okay. No, go ahead.

9 Q. So what if they're already running
10 away? I mean, wouldn't that two to four seconds
11 be an opportunity to get out of the room while
12 no one is firing at them?

13 A. Well, it's only significant if it's
14 two to four seconds that they wouldn't have been
15 firing. If they were going to be firing and
16 then they didn't because of this fumbling, as
17 you put it, then, yeah, that makes a difference.
18 But if they were going to be shooting that
19 slowly anyway, if there were already going to be
20 a two to four second delay in their shooting,
21 then no, it doesn't matter that they're
22 fumbling. It only matters if there's some
23 additional delay in when the next shots come due

1 to that fumbling.

2 Q. Why isn't it always an additional
3 delay when the magazine is being changed?

4 A. Because mass shooters shoot very
5 slowly and deliberately. They take their time
6 between shots.

7 Q. But they're adding to the time in
8 which they can take shots --

9 MR. PORTER: Were you done with your
10 answer?

11 THE WITNESS: No.

12 MR. PORTER: Okay. Answer his
13 question, then he can ask another one.

14 A. You know, the information we have
15 from eyewitnesses, in surviving eyewitnesses in
16 mass shooting incidents is that the shooters
17 pick out individual targets and they approach
18 those targets to get closer so they are more
19 likely to be able to shoot that person, which
20 means they take their time. Taking a lot of
21 time to fire each round is the norm. And you
22 kind of lose sight of that if you focus on
23 extraordinary, exceptional situations like the

1 Las Vegas incident.

2 Q. Before we get to the Las Vegas
3 incident, and we will, if someone is acting
4 slowly and deliberately and they're already
5 taking some time between shots, wouldn't it
6 nevertheless add to the amount of time between
7 shots if they have to change a magazine between
8 shots?

9 A. No. Because it's time they would
10 have been taking anyway. I mean, it's not
11 additional time. That seems to be the
12 assumption you're making, that it's additional
13 delay time rather than the time between shots
14 that would have occurred anyway.

15 Q. So --

16 A. So sometimes it's due to the fact
17 that they're choosing another target; other
18 times it might be because they're fumbling with
19 a magazine. But the time interval is the time
20 interval, whatever it is. So the fact that they
21 fumble with the magazine doesn't necessarily
22 imply anything about additional time between
23 shots, as you seem to be assuming.

1 Q. I don't understand because it seems
2 to me -- and I want you to explain to me why if
3 somebody is taking ten seconds to choose
4 targets, why they don't also add time if they're
5 changing a magazine and then choosing a new
6 target?

7 A. And I guess I don't understand why
8 you would think that would be the case. I mean,
9 it just doesn't strike me as logical. They may
10 simply allocate, if you want to put it that way,
11 or devote some of that ten-second interval to
12 fumbling with the magazine instead of, you know,
13 firing the gun or pursuing a victim or whatever.

14 Q. Wouldn't they need the time both to
15 change the magazine and to choose a new target?

16 A. Which time are we talking about now?

17 Q. The time between shots.

18 A. They might use that time for
19 anything. I mean, yeah, among other things,
20 they might use it for choosing a victim or
21 pursuing a victim or changing magazines or
22 fumbling with the magazines. Any of those
23 things might be what they're devoting that

1 interval to.

2 Q. Let me ask you to think about a
3 situation where as soon as shots are fired,
4 people commence running away or getting to a
5 place where they're protected. Assuming that
6 there needs to be a magazine change, doesn't
7 that add to the opportunity for someone to get
8 away from the shooter?

9 MR. PORTER: I object to the form of
10 the question. You can answer that if you can.

11 A. No.

12 Q. And that's based on your belief that
13 the shooter will be mechanically acquiring
14 targets the entire time regardless of whether
15 they're changing a magazine?

16 A. No, it's not. It's just based on the
17 assumption that he will be taking his time for
18 whatever reason, whatever he might be doing. It
19 may be just a matter of preference. You know,
20 maybe whatever lust for violence he's had, it's
21 tapering off for a moment. We don't really know
22 why. The point is mass shooters routinely take
23 a long time to -- well, relatively speaking,

1 time between shots for whatever reason for
2 whatever purposes.

3 Q. And if you were running away from a
4 mass shooter, wouldn't you rather do it during a
5 magazine change when the shooter can't shoot at
6 you than during a time when he is simply
7 acquiring his target?

8 MR. PORTER: I object to the form of
9 the question, but you can answer.

10 A. I find it highly unlikely any victim
11 would be aware of the distinction or paying
12 attention. I mean, they would be panicked.
13 They would be either paralyzed and not moving at
14 all or they would be panicked and without
15 respect to what the shooter is doing, they would
16 be trying to get away.

17 Q. And if the choice had been made to
18 run away, wouldn't it be better to do so when
19 the shooter couldn't shoot at you than when the
20 shooter just isn't choosing to shoot at you?

21 MR. PORTER: I object to the form of
22 the question, but you can answer.

23 A. It wouldn't make a dime's worth of

1 difference. All that matters to the victim is
2 the guy is not shooting and, therefore, they
3 couldn't shoot the victim.

4 Q. But in one scenario, the shooter
5 could choose to fire more quickly while you're
6 running away and the other, he could not because
7 he was in the midst of changing a magazine;
8 isn't that right?

9 A. If you're just asking could he shoot
10 when he's not changing a magazine and can't
11 shoot with that weapon while he's changing a
12 magazine, then that much is true. Although a
13 more expanded answer would be, well, most mass
14 shooters, the vast majority, also have multiple
15 guns and, in fact, they wouldn't have to delay
16 at all. Then they would have the option to
17 continue shooting, even totally ignoring or
18 bypassing or foregoing the magazine change.

19 Q. And that's only true if the gun is at
20 hand, right?

21 A. Well, yes, of course.

22 Q. So let's talk about Las Vegas,
23 because it is important here. Is it your

1 understanding that as soon as people recognized
2 that they were being fired on that they
3 commenced running away or trying to get behind a
4 barrier to avoid the shots?

5 A. Yes.

6 Q. And isn't it true that if the shooter
7 in Las Vegas had been forced to change
8 magazines, there would have been more time for
9 people to run away?

10 MR. PORTER: I object to the form of
11 the question.

12 A. I don't know. I just don't know
13 enough about that particular incident.

14 Q. Why wouldn't they have been able to
15 use the time during which the magazine was being
16 changed to add to their opportunity to get away
17 from where the shots were being aimed?

18 A. Because we don't know why there is
19 that additional time. We don't even know that
20 the additional time when he wasn't shooting was
21 due to magazine changes.

22 Q. But if he had been required to change
23 magazines, wouldn't there have been more time

1 between shots?

2 A. Only if it's additional time when
3 he's not shooting. That's the logical point I'm
4 making here. It's pretty self-evident. I mean,
5 it's only additional time if it's time he
6 otherwise would have been shooting.

7 Q. Well, you're assuming that he would
8 have been -- he wouldn't have to do both; use
9 the additional time he is using between shots
10 plus the time to change magazines, right?

11 A. You lost me.

12 Q. Your assumption is that when people
13 are taking time between shots, they wouldn't
14 also have to take time to change magazines if a
15 magazine change is required?

16 A. I still don't understand the
17 question.

18 Q. So let's assume that the shooter in
19 Las Vegas brought two 100-round magazines to the
20 site of the shooting and could shoot
21 continuously until the magazines were expired
22 because he had a bump stock.

23 MR. PORTER: We're assuming one

1 firearm, two 100-round magazines for the
2 purposes of this question?

3 THE WITNESS: This is not accurate to
4 the Las Vegas situation.

5 MR. PORTER: I just want to make sure
6 I understand the question.

7 Q. Let's assume that all the other facts
8 of what happened in Las Vegas were true, but
9 what the shooter had was one gun with two
10 100-round magazines. How long would the time
11 have been for him to change magazines in that
12 scenario?

13 A. Probably two to four seconds.

14 Q. And if he had been forced to bring 20
15 10-round magazines to which he had the same
16 number of shots, how long would the time have
17 been when he was forced to change magazines
18 during the incident?

19 A. In that totally hypothetical
20 situation, ten -- not ten, but nine times two to
21 four seconds.

22 Q. So somewhere between 18 and 36
23 seconds?

1 A. Yes, in that completely hypothetical
2 scenario.

3 Q. And in that hypothetical scenario,
4 wouldn't there have been an opportunity for
5 people to get away from where the shots were
6 being aimed during that period?

7 A. Well, there would be time for them to
8 escape regardless of why there isn't shooting
9 going on, whether it's due to magazine changes
10 or not.

11 Q. Go to page 7 of your report.

12 A. (Witness complies).

13 Q. The second paragraph references 23
14 LCM involved mass shootings known to have
15 occurred from 1994 through July 2013, (with or
16 without LCM use). I'm not sure I understand
17 what you mean.

18 A. I don't either. I think that
19 parenthetical remark is a typo. Yeah, that's
20 not the set of events I was describing. It's
21 that statement without the parenthetical remark;
22 that is, without the phrase with or without LCM
23 use, which doesn't make any sense at all, given

1 that I say I'm talking about LCM involved mass
2 shootings. And the research in question, in
3 fact, did only pertain to mass shootings where
4 an LCM was involved.

5 Q. And you're referring there to the
6 incidents listed in Table 1 on page 13?

7 A. No. This paragraph is addressing a
8 different set of events and a different issue.
9 This paragraph and that sentence that you quoted
10 is concerning whether or not the offenders had
11 multiple guns and multiple magazines. And Table
12 1 -- wait a minute. Are you talking about Table
13 1 in the expert report?

14 Q. Yes.

15 A. Yeah, that table only refers to rates
16 of fire. In that set of events, it excludes
17 some mass shootings where a large capacity
18 magazine was known to have been used because we
19 don't have the information to establish rate of
20 fire; and likewise, it includes some mass
21 shootings that did not involve large capacity
22 magazines but we did have information necessary
23 to establish rate of fire.

1 Q. And it excludes all of the mass
2 shootings, as other people would define them,
3 unless they had more than six casualties?

4 A. That's correct. Had to have more
5 than six to be included in that table.

6 Q. And they have to have more than six
7 to be included in the paragraph that begins, my
8 research of these 23 LCM involved mass
9 shootings?

10 A. Correct.

11 Q. So you use that same definition?

12 A. Correct.

13 MR. KLEIN: Let's take a break there.
14 Good time for a lunch break?

15 MR. PORTER: Yeah, sure.

16 (Lunch recess was taken from
17 12:44 p.m. to 1:56 p.m.)

18 Q. I'd like you to turn to Table 1 of
19 your report, which is on page 13.

20 A. Okay.

21 Q. So this is work that was discussed in
22 the context of the Kolbe deposition and in your
23 Kolbe report, right?

1 A. Really, I don't know the names of
2 cases. It's another assault weapon case?

3 Q. The Maryland case.

4 A. Yes. In that case, yes.

5 Q. And you presented in the context of
6 that case some additional information that's not
7 in your report for this case. Do you remember
8 that?

9 A. No.

10 Q. I'll show it to you. I'm showing you
11 an exhibit labeled Exhibit Number 3. Is that
12 document familiar to you?

13 A. It's not the same thing? It looks an
14 awful lot like Exhibit 2.

15 Q. I'm sorry. I just handed you the
16 wrong document.

17 MR. KLEIN: Let's go off the record
18 for a second.

19 (Off-the-Record discussion)

20 (Whereupon, Defendant's Exhibit 3
21 was marked for identification and
22 same is attached hereto.)

23 Q. During the break I found the correct

1 exhibit. This is Exhibit Number 3. I've
2 withdrawn what you were previously looking at,
3 which you were correct, is exactly the same as
4 Exhibit Number 2. If you look at the second
5 page to that document, is that your signature?

6 A. Yes, it is.

7 Q. And the date on this is March 16th,
8 2014?

9 A. Correct.

10 Q. Do you remember this as the
11 declaration that you submitted in connection
12 with the Maryland case?

13 A. Yes.

14 Q. I'd like you to turn to page 11 of
15 the exhibit article. I'd like you to turn to
16 page 11 of Exhibit 3. Is that data the same as
17 the data that is appended to Exhibit Number 2?

18 A. I'm pretty sure it's the same set of
19 mass shootings.

20 Q. And are there any differences in the
21 way you report the data?

22 A. No, I don't think so. I took a quick
23 glance at it and it doesn't look any different.

1 Q. And in Exhibit Number 3, your source
2 is appendix synopsis of mass shootings. Do you
3 see that at the bottom?

4 A. Yes.

5 Q. In Exhibit Number 2 you cited Kleck
6 (2016).

7 A. Correct.

8 Q. And I think you testified earlier
9 that's because you published an article based on
10 this data which you referred to in Exhibit 2 as
11 Kleck (2016)?

12 A. Yeah, by this date, I mean it's a
13 subset of the data I referred to in Exhibit 3.
14 It was a subset of that. But it's the same
15 subset in both Exhibit 2 and Exhibit 3.

16 Q. It's the same subset of a larger data
17 set, you have more information in the
18 publication than you did present in this
19 synopses that are appended to Exhibit Number 3,
20 right?

21 A. Yeah. And most of the stuff in the
22 appendix to Exhibit 3, I didn't use in the study
23 that's cited in Exhibit 2.

1 Q. But you based your expert report in
2 both cases on the same data set, right?

3 A. Well, I wouldn't -- in my terms, no,
4 I wouldn't have said that because it's a subset
5 of the larger set of mass shootings that's used
6 in the later Kleck (2016) statement.

7 Q. You presented the same data in
8 support of your expert report in both cases,
9 right?

10 A. On the issue of rate of fire, yes.

11 Q. So in connection with Exhibit 3, the
12 Maryland declaration, you have an appendix that
13 starts on page 12. Can you turn to that?

14 A. Okay.

15 Q. And that appendix has more
16 information about each incident that you
17 included in the table in appendix 3, right?

18 A. Appendix 3? I don't know what
19 appendix 3 is.

20 Q. I should have said Exhibit 3. I'm
21 sorry.

22 A. Okay. Could you repeat the question?

23 Q. Yeah. The appendix to Exhibit 3 that

1 starts on page 12 includes more information
2 about each incident that appears in Table 1 --

3 A. Oh, yeah, definitely. Yeah,
4 absolutely.

5 Q. And the appendix that starts on page
6 12 is not included in the Massachusetts report,
7 right?

8 A. That's correct, because I didn't use
9 most of that. Most of those incidents have no
10 known involvement of large capacity magazines.
11 And so as I explained earlier, there's no point
12 in trying to judge the impact of large capacity
13 magazine use in incidents where it wasn't used,
14 so.

15 Q. So, all I'm trying to get to is that
16 the information in the appendix in Exhibit 3 is
17 just as useful for the data in Table 1 of
18 Exhibit 2 as it is for the data in Table 1 of
19 Exhibit 3? It's the same backup information
20 about the incidents we're looking at?

21 A. For Table 1 for the rate of fire
22 stuff, absolutely it's the exact same thing.

23 Q. So we can rely for the purposes of

1 understanding the data in Table 1 in the
2 Massachusetts report on the information you
3 provide in the appendix that was in your
4 Maryland report?

5 A. Not necessarily. Because if -- you
6 know, you can see there's like a three or four
7 year gap between Kleck (2016) and this thing,
8 which -- the appendix is earlier material. So,
9 if I came across any new information where
10 previously I didn't know it in this appendix and
11 then I became aware of it, then I would add it
12 in and I would take account of it.

13 Q. So you didn't change the data from
14 Exhibit 2 to Exhibit 3? Table 1 in Exhibit 2 is
15 the same as Table 1 in Exhibit 3, right?

16 A. Yes.

17 Q. And the backup information you
18 provided at the time of your Maryland
19 declaration that appears in appendix 1 to the
20 Maryland declaration is explanatory with respect
21 to Table 1 in Exhibit 2, the Massachusetts
22 declaration, right?

23 A. Yes, regarding the rate of fire.

1 That wasn't changed. In fact, Table 1 isn't
2 even confined to cases where a large capacity
3 magazine was known to be used. There's a few
4 cases where, you know, it wasn't known.

5 Q. Right, we talked about that earlier.
6 So in connection with preparing Table 1, you've
7 omitted information about the number of
8 injuries, correct?

9 A. Omitted? Well, it wasn't there in
10 the first place, I mean. I guess you could say,
11 yeah, I didn't put it in in the first place
12 certainly.

13 Q. So Table 1 doesn't have any
14 information about the number of people who were
15 injured in each incident, correct?

16 A. Only that you know that there were
17 over six killed or injured.

18 Q. And --

19 A. And not separately tabulated dead
20 versus not dead.

21 Q. But it could be six or 60; there's no
22 way to know that from Table 1, right?

23 A. It could be seven or 60, but it

1 couldn't be six because they all have more than
2 six.

3 Q. So it could be seven or 60, correct?

4 A. Correct.

5 Q. And the number of deaths in
6 connection with each incident in Table 1 isn't
7 included either, right?

8 A. Yeah, it's not mentioned in Table 1,
9 no.

10 Q. But you had that data, right?

11 A. Sure.

12 Q. Because you included it in your
13 Maryland report in appendix --

14 A. Sure. Table 1 is concerned with rate
15 of fire, it's not concerned with number of dead
16 or number of injured other than the fact that
17 there had to be more than a total of six killed
18 or injured in order to qualify.

19 Q. So rate of fire, you studied rate of
20 fire without respect to the number of people who
21 might have been killed or injured as long as --
22 the incident was included because it was above
23 six, right?

1 A. Correct.

2 Q. And in the second column of Table 1,
3 and I'm back on Exhibit 2, which is your
4 declaration in the Massachusetts case, you list
5 the number of shots fired?

6 A. Wait a minute. Exhibit 2 is in
7 connection with the current case.

8 Q. The Massachusetts case, that's right.

9 A. So you want Exhibit 3?

10 Q. I want Exhibit 2.

11 MR. PORTER: For this question, he
12 wants you to look at the table in Exhibit 2.

13 Q. I do.

14 A. Okay.

15 Q. You have a column in that table
16 labeled Shots Fired. Do you see that?

17 A. Yes.

18 Q. That's taken from news reports,
19 right?

20 A. Correct.

21 Q. And in a few of the columns, more
22 than a few, you don't have the exact number of
23 shots fired?

1 A. Correct.

2 Q. And that's because that information
3 wasn't available in the accounts you used to
4 develop the data here?

5 A. That's right.

6 Q. And so in the column labeled Shots
7 Fired -- let's look at just the first incident
8 for the time being. The number represented
9 there is greater than 50?

10 A. Uh-huh (positive response), yes.

11 Q. And you don't know exactly how many
12 shots were fired?

13 A. That's right.

14 Q. And what that means is you're not
15 sure that you've accurately calculated the rate
16 of fire, right?

17 A. Well, best available information was
18 that it was 50 or somewhat over in that -- over
19 that. That's about all we know.

20 Q. Somewhat over, but you don't know how
21 much over?

22 A. No. We have no idea, no, not from
23 the news media accounts.

1 Q. It could be 50 or it could be 100,
2 right?

3 A. Well, unlikely to be 100, otherwise
4 people wouldn't have described it as it's over
5 50 because they could have just as easily said
6 over ten if there were 100 rounds. But I think
7 that usually means it's somewhat over 50.

8 Q. So when you calculated rate of fire,
9 you used the 50 number, even though you knew the
10 number of shots was more than 50?

11 A. Right. It could have been 51 for all
12 I know.

13 Q. It could also have been 60, right?

14 A. Maybe, yeah.

15 Q. Could have been 75, right?

16 A. Less likely.

17 Q. But it could have been?

18 A. As a remote possibility, sure.

19 Q. In the fourth incident down, the one
20 dated 9/15/99, the number of shots fired is
21 greater than 100. Do you see that?

22 A. Correct.

23 Q. And you used 100 to calculate the

1 rate of fire, right?

2 A. Uh-huh (positive response), yeah.
3 Closest thing to specific information I had.

4 Q. But it could have been a lot more
5 shots than 100, right?

6 A. We can speculate, you know, about
7 anything we want. And yeah, it's certainly
8 possible.

9 Q. When people choose a round number
10 like that, they're often over or underestimating
11 by some significant degree, right?

12 A. I don't know that to be the case at
13 all, no. I mean, they just don't want to risk a
14 more exact estimate is about all it means.

15 Q. And then if you go down to the last
16 incident, and I'm not -- I'm not going to
17 belabor this point too much longer, but you have
18 154 plus, right?

19 A. Yes.

20 Q. And that means that it was at least
21 154 and could have been more?

22 A. That is correct.

23 Q. And you used the 154 as the number of

1 shots fired in your calculation?

2 A. Yes.

3 Q. And unlike some of the other
4 columns -- I'm sorry, unlike some of the other
5 incidents, you don't have any qualification on
6 your seconds per shot calculation in the final
7 column?

8 A. I don't understand what you mean by
9 qualifications.

10 Q. Let's go back and look at the first
11 incident again. The number of shots fired is
12 greater than 50?

13 A. Yes.

14 Q. And in the second column it says c.5.
15 That's means about five, right?

16 A. Yes.

17 Q. So you don't know the time of firing
18 either?

19 A. Correct.

20 Q. It could have been more; it could
21 have been less?

22 A. Yeah. But if I had to make a single
23 guess for a single time, best guess would have

1 been five minutes, just as best estimate of
2 shots fired would be 50, as opposed to just
3 saying, well, it might be 60 or it might be 100.
4 The closest thing to specific information we had
5 was 50 shots fired and the closest thing to
6 specific information we had about time of firing
7 was five minutes.

8 Q. That means --

9 A. And by the way, circa means it could
10 have been under as well as over or either one.
11 So it just means around.

12 Q. It means you don't really know the
13 time of fire, though?

14 A. Well, we know approximately what it
15 is; we just don't know exactly what it was.

16 Q. Correct. So then in the third column
17 you've got a calculation, which is Shots Per
18 Minute and it's greater than ten?

19 A. Yes.

20 Q. And so you're using the greater than
21 symbol there to qualify the answer because
22 you're using the estimates --

23 A. Oh, I see what you mean by a

1 qualification. In other words, establishing
2 sort of a range.

3 Q. That's right. So in the last column
4 it says less than six because you're again
5 running a calculation and you're making clear in
6 including the less than symbol that it isn't
7 precise. It could be less because you don't
8 know the number of -- precise number of shots
9 fired and you don't know the precise time of
10 firing, right?

11 A. Correct.

12 Q. In that last column, and I'm going to
13 refer to that as the Newtown incident if that's
14 fair. That's the incident that we're talking
15 about --

16 A. You're asking the question do I think
17 it's fair?

18 Q. Yes.

19 A. Yeah, sure.

20 Q. That's the incident in Newtown,
21 Connecticut where 20 children and six adults
22 were shot in a school, right?

23 A. Yes.

1 Q. And again, in the second column, the
2 Shots Fired column, you have included the number
3 154 plus, meaning at least 154 shots were fired,
4 right?

5 A. Correct.

6 Q. And in the Shots Per Minute column,
7 you've done a calculation and it says 38.5 plus,
8 meaning that it's at least 38.5 shots being
9 fired per minute?

10 A. Correct.

11 Q. And then in the last column it says
12 1.6. You haven't qualified that in the same way
13 to make clear that it's more or less not 1.6,
14 right?

15 A. No, I haven't.

16 Q. And you haven't also included the
17 number of victims here. So we could understand
18 the number of people who were murdered by the
19 154 shots that were fired, the 154 plus shots
20 that were fired?

21 A. Not from this table, no.

22 Q. And you don't include any information
23 about how many people were shot multiple times

1 in the incident, right?

2 A. In this table, no.

3 Q. So you don't know anything about
4 whether the firing was deliberate or not
5 deliberate because you don't know how many times
6 the shooter missed his target and how many times
7 he fired wildly, right?

8 MR. PORTER: Object to the form of
9 the question. But you can answer.

10 A. I know rate of fire. That's all I'm
11 inferring from this table is rate of fire.

12 Q. You inferred from that one of the --
13 and I'm going back to your prior testimony, and
14 you can feel free to correct me if I'm wrong.
15 You inferred from that that shooters in mass
16 shootings often don't fire as quickly as the gun
17 that they're using will allow?

18 A. No, I didn't infer it solely from
19 this table. This table merely confirms what
20 eyewitnesses, interviewed usually by journalists
21 after the fact, say about how the shooter went
22 about his business. But it certainly confirms
23 that it's consistent with it because the rates

1 of fire are clearly not very high.

2 Q. And it's fair to say that you can
3 conclude from your evaluation of the data that
4 the shooter was firing approximately 1.6 -- a
5 shot every 1.6 seconds during the incident,
6 right?

7 A. Around that, yeah, uh-huh (positive
8 response).

9 Q. And so he's firing pretty quickly
10 from any sort of perspective of getting away,
11 right?

12 A. On average, yes. These are averages
13 throughout the incident. They don't describe
14 any particular one moment --

15 Q. Right. And he might have --

16 A. -- so there might be many minutes
17 where he's taking his time, he's going up to
18 individual victims and shooting them at close
19 range and then using the gun to fire as fast as
20 it's mechanically capable of doing in other
21 circumstances, and then it averages out to 1.6
22 seconds per shot.

23 Q. And we know about this incident that

1 the shooter, whose name was Adam Lanza, was
2 walking from room to room, right?

3 A. Yes.

4 Q. We don't have any basis to believe he
5 was shooting randomly while moving from one room
6 to the next, right?

7 A. Don't have any reason to believe
8 that, no.

9 Q. So while he was in a room, he was
10 shooting pretty quickly. It seems clear that it
11 was at least one shot every 1.6 seconds, right,
12 and probably faster?

13 A. Yeah, there were sometimes -- it's
14 the nature of an average. Sometimes he was
15 firing faster and sometimes he was firing much
16 slower. And of course, obviously, sometimes he
17 was not firing at all.

18 Q. So if you had smaller capacity
19 magazines and was required to change magazines
20 more frequently and to take the two to four
21 seconds you think it would have taken him to
22 change a magazine, it would have slowed his rate
23 of fire at some level, correct?

1 A. No, we don't know that at all.

2 Q. So he's shooting at least as fast as
3 one round every 1.6 seconds, correct?

4 A. Yes.

5 Q. And if he had to change magazines,
6 that would have taken two to four seconds,
7 right?

8 A. Yes. If he was changing magazines.
9 He had multiple guns, too, as do nearly all the
10 vast majority of mass shooters.

11 Q. And if he had to change guns, that
12 would take some period of time as well, correct?

13 A. Well, he was often changing magazines
14 when he didn't even have to, meaning he either
15 had an already loaded gun ready to continue
16 firing without interruption or he was using
17 magazines that were ready to go and he hadn't
18 even emptied the previous magazine because cops
19 found a number of magazines that were only
20 partially discharged. So he was doing what you
21 might call kind of discretionary magazine
22 changes. He did them maybe sometimes when he
23 needed to in order to continue shooting and

1 other times when he didn't need to.

2 Q. If he had to change guns, as you
3 speculate, that would take some time as well,
4 right, similar to the amount of time it would
5 take to change a magazine?

6 A. Probably less. I mean, you could
7 literally be holding two guns in -- one in
8 either hand and fire simultaneously, never mind
9 with a two to four second interval, while you,
10 you know, stop shooting.

11 Q. And the need to aim, if you're
12 hypothesizing a deliberate firing, as you have,
13 would take some time, right?

14 A. Could you ask that --

15 Q. He would need to aim the second gun
16 if he changed guns, even if it was in a
17 different hand?

18 A. Yes, it certainly takes some small
19 amount of time to aim, you know, regardless.

20 Q. And even more if he has to pick up a
21 gun from some place that he's got it holstered
22 or stored, right?

23 A. Hypothetically, if that were the

1 situation, sure, he would have to also bend over
2 to pick up a gun that's on the ground or
3 whatever.

4 Q. And he would have to take a moment to
5 aim the gun as well?

6 A. Yeah.

7 Q. And you're aware that in the reports
8 about the Newtown incident, eyewitnesses had
9 stated that children were able to escape during
10 the magazine change, right?

11 A. Yes. Well, let me revise that. I'm
12 aware that that was the claim made in
13 newspapers, in the news outlets.

14 Q. But you're relying on newspaper
15 information for this whole study, right?

16 A. Well, some of the information -- the
17 information that I rely on that comes from news
18 media outlets, it originates with law
19 enforcement. I mean, the reporters are not
20 making this stuff up, they're getting almost all
21 of this from the cops.

22 Q. You don't know that, right? It could
23 also come from eyewitnesses, couldn't it?

1 A. No. Most of this stuff, it couldn't.
2 For example, when they know exact numbers of
3 rounds, the bystanders and witnesses, they don't
4 know that.

5 Q. So what --

6 A. They can guess. They can give these
7 really approximate assessments. But when the
8 guy uses a semi-automatic weapon, which is
9 ejecting cartridge shells, the cops can know
10 exactly. And if the journalists are reporting
11 exact numbers of rounds fired, then they have to
12 be getting that from the police. So yes, I do
13 know that's coming from the police and not from
14 eyewitnesses.

15 And some other information, you know,
16 where on the rare occasions they know exactly
17 how long the shooting lasted, that's usually
18 also because of some piece of information the
19 cops had that victims and bystanders wouldn't
20 know. The latter could just guess. But if the
21 cops had found an audio recording, for example,
22 made during the shooting, then they can know
23 exactly how long the shooting persisted, like,

1 you know, if somebody made a 911 call.

2 Q. Do you have any idea in how many of
3 these incidents the police had a audio recording
4 of the duration of the shooting?

5 A. I haven't the faintest idea other
6 than there were -- there was at least one.

7 Q. But it's possible that all of the
8 information about the duration of shooting comes
9 from eyewitness information, right?

10 A. No, that's not possible. Because as
11 I just said, there's at least one incident where
12 they knew it from an audio recording.

13 Q. So in 19 of the 20 cases you've got
14 listed here, it's possible that the duration of
15 shooting information came to the police from an
16 eyewitness?

17 A. Is it possible, sure. It's possible.
18 Lots of things are possible.

19 Q. And let me ask you to count and make
20 sure that I've counted correctly that you've
21 reported here on 20 incidents?

22 A. 21 -- no. Yeah, 21. Yeah, 21.

23 Q. Right. 21 incidents. In how many of

1 those incidents did you have the exact number of
2 shots fired based on the reports you reviewed?

3 MR. PORTER: I'm sorry. Don't write
4 anything on the exhibit.

5 THE WITNESS: Oh, sorry.

6 MR. PORTER: That's okay.

7 Q. You can use the other side of the pen
8 if it helps you to count.

9 A. Force of habit. Nine.

10 Q. And the rest of the incidents, you're
11 relying on an estimate of the number of shots
12 fired which you think is reasonably likely to be
13 a decent estimate?

14 A. Correct.

15 Q. In how many of the incidents that you
16 report on do you have the exact number of
17 minutes for time of firing?

18 A. Nine.

19 Q. And isn't it the case that in many of
20 these incidents, the last shot fired was a shot
21 that the criminal fired to take his or her own
22 life?

23 A. Yes.

1 Q. And isn't it possible that in many
2 cases where the criminal is firing the last shot
3 to take their own life that that last shot took
4 some period of deliberation before it was fired?

5 A. I don't have any affirmative evidence
6 that that's the case. But you know, as a
7 hypothetical possibility, sure, it might be.

8 Q. Doesn't that mean that the rate of
9 fire during the incident might be estimated at
10 too long an interval?

11 A. In those cases where it ended in the
12 suicide of a shooting, yes, it's a possibility.
13 In the other cases, you know, it's sort of
14 irrelevant.

15 Q. Would you agree as a general
16 principle that a reasonably quick person can
17 exit a room in less than two to four seconds?

18 A. It's way too abstract a question for
19 me. It would depend on how crowded it is and
20 how many other people are in the way and how big
21 the room is. And so I haven't a clue whether
22 that's true or not.

23 Q. Let's make it less abstract. We're

1 sitting in a conference room that I'm going to
2 estimate is about 30 feet by 15 feet. Is that a
3 fair estimate of the size of this room?

4 A. Sure, why not.

5 Q. And you're sitting across the table
6 from me and I'm sitting, what, twelve feet from
7 the door?

8 A. Twelve feet away, sure.

9 Q. Could I get out of this room in two
10 to four seconds?

11 A. Yes.

12 Q. Thank you. Did you do the same
13 analysis that you did in Table 1 for any mass
14 shootings after the Newtown incident?

15 A. No.

16 Q. So you don't know the rate of
17 shooting, for example, at Pulse Nightclub in
18 Orlando, Florida?

19 A. No. These were all cases confined to
20 the 20-year period that the Kleck (2016) study
21 concerned.

22 Q. You don't know the rate of firing in
23 Las Vegas?

1 A. I don't know the rate of fire about
2 any incident that occurred outside the interval
3 1994 to 2013.

4 Q. You don't know the rate of fire in
5 the incident in San Bernardino, do you?

6 A. If it occurred outside that range,
7 no.

8 Q. You're aware as well that
9 eyewitnesses reported that the shooter in an
10 incident in Tucson, Arizona, an attempted
11 assassination of Congresswoman Gabby Giffords,
12 that the shooter was tackled during a magazine
13 change, right?

14 A. Some people said that, yes.

15 Q. And that was in news reports as well?

16 A. Yes.

17 Q. But you don't think that to be true?

18 A. I'd say it's unknown whether it's
19 true. The New York Times, generally regarded as
20 a reliable news source, said that police found
21 the magazine he was using had -- was defective,
22 it had a broken spring, and so he couldn't fire
23 any further. He wasn't changing a magazine, he

1 was struggling with a defective magazine. That
2 was the alternative version of what was going on
3 when he was tackled.

4 Q. If the magazine was defective, he
5 could have changed it and used a different
6 magazine to continue firing, correct?

7 A. If he had some additional ones that
8 weren't defective, he certainly could have done
9 that. But the New York Times article was
10 indicating that he, in fact, did not -- that's
11 not what he was doing.

12 Q. Do you think that the news reports
13 are on both sides of the question?

14 A. Yes, they are -- they give two
15 different versions of what happened.

16 Q. And that's true a lot of times with
17 news reports, right, they're not always exactly
18 in step, correct?

19 A. On some issues.

20 Q. Some reporters will report one thing
21 and others will report something different?

22 A. Right. And others, they're exactly
23 uniformly correct; every last one agrees with

1 the others.

2 MR. KLEIN: I'll double check and
3 make sure I have the correct exhibit this time.

4 (Whereupon, Defendant's Exhibit 4
5 was marked for identification and
6 same is attached hereto.)

7 Q. Let me show you a document labeled
8 Exhibit Number 4. Is that a document you're
9 familiar with?

10 A. Familiar with, no. But, yeah, I
11 recollect it.

12 Q. Meaning you recollect that this is a
13 deposition that you were involved in on January
14 2nd, 2014?

15 A. Yes.

16 Q. And that deposition occurred in the
17 Maryland case we've been talking about?

18 A. Yes.

19 Q. And you are an expert witness in that
20 case as well, correct?

21 A. Correct.

22 Q. And at the time of this deposition,
23 was there counsel present on your side of the

1 case?

2 A. I think so, yeah.

3 Q. And in fact, that counsel was John
4 Parker Sweeney of the Bradley firm, right?

5 A. If you say so.

6 Q. If you look at the top of the second
7 page.

8 A. Yeah, I can see. Yeah, that's the
9 only reason I can say yes because I'm reading
10 it.

11 Q. You don't remember, but there was
12 counsel present, correct?

13 A. No. No offense to present company,
14 but they do tend to run together.

15 Q. Is that a statement about all
16 lawyers?

17 A. Well, I deal with a lot of them, so.

18 Q. Do you remember at the time of this
19 deposition that you were sworn as a witness?

20 A. Yes.

21 Q. And that means that you were
22 obligated to tell the truth during the course of
23 the deposition?

1 A. Yes.

2 Q. Do you remember at the time that you
3 did your best to answer all questions as
4 truthfully and accurately as possible?

5 A. I always do.

6 Q. I would like you to turn to page 138
7 of Exhibit 4.

8 A. (Witness complies).

9 Q. If you start on line 10, there are
10 some questions there about an incident in
11 Aurora, Colorado at a movie theater. Could you
12 read to the end of the discussion of that
13 incident?

14 A. Question: Now, you don't list the
15 Aurora, Colorado shooting in here, am I right
16 about that? Answer: What was the date of that?
17 Let's see. Question: July 20th, 2012. I found
18 myself in Aurora two weeks after that. It is on
19 page 33 to 34 of your report. Answer: Okay.
20 No, I don't.

21 Q. So let me ask you about that. Isn't
22 that within the time frame of your study?

23 A. It is.

1 Q. And do you remember why you didn't
2 include this incident in the study?

3 A. In the Table 1 you mean?

4 Q. Yes.

5 A. The rate of fire stuff? Probably
6 because at the time, I didn't have information
7 on both number of rounds and the time of the
8 shooting.

9 Q. So you would have excluded it because
10 you didn't have sufficient information to
11 include it?

12 A. Right.

13 Q. And you don't know anything as you
14 sit here about whether large capacity magazines
15 were used in this incident?

16 A. I think they were, so.

17 Q. Do you remember how many people died
18 in that incident?

19 A. No.

20 Q. So at that point, your testimony
21 continues. And you don't have to read this out
22 loud. But could you read from page 138, line 22
23 until page 139, line 10?

1 A. Question: Now, that's a situation
2 where you were in a movie theater which
3 obviously has multiple exits, correct? Answer:
4 Correct. Question: So people certainly could
5 flee in multiple different directions while a
6 shooter was shooting; is that correct -- right?
7 Answer: Correct. And if you assume there were
8 four exits, as there are in most theaters, two
9 into the theater complex and two out somewhere
10 else, you would have had four different places
11 where people could have been running; is that
12 right? Answer: Possibly. Question: And in
13 the time that it would take Mr. Holmes to change
14 magazines, is it possible that additional people
15 could have gotten out if he had had 10-round
16 magazines instead of a 100-round drum? Answer:
17 It's possible, but I don't think there was any
18 affirmative evidence of it. But sure, it is a
19 logical possibility.

20 Q. So if I asked you those same
21 questions today, you would give more or less the
22 same answers, right?

23 A. Pretty much, yeah.

1 Q. And if you would just read to
2 yourself -- and again, I'll let you know when
3 you need to read out loud -- the questions and
4 answers from line (sic) 139, 18 to line (sic)
5 140, 4. And I'll just ask you a couple of quick
6 questions about that.

7 (Witness reviews the document)

8 A. Yes.

9 Q. And you would answer those same
10 questions the same way if I asked them today,
11 right?

12 A. Yes. But only because, you know, I'd
13 have to look up the relevant information to give
14 you a new, more accurate answer.

15 Q. Well, this is just math, right? I'm
16 really not understanding that answer because
17 he's asking --

18 A. Oh, I see what you mean.

19 Q. -- the amount of time it takes to
20 change magazines, right?

21 A. So you're just asking about the point
22 being made by the questioner on lines 18 through
23 20?

1 Q. Yes. It may be simpler for me to
2 just ask you the same questions, if that would
3 be preferable from your perspective.

4 A. Yes. I mean -- and as I pointed out
5 in my answers in that deposition, yeah, you
6 would have fewer instances of reloading.

7 Q. And that would give people time to
8 attempt to escape, right?

9 A. Only if it's additional time as
10 distinct from time the shooter was going to take
11 anyway. But if it's time he was going to take
12 anyway, then there's no additional time for
13 prospective victims to escape.

14 Q. You have no idea how fast he was
15 firing, right, because you didn't have the data
16 for that?

17 A. No, not at the time.

18 Q. If you would turn to page 151.

19 A. Okay.

20 Q. You were asked the question, what
21 rate of fire are semi-automatic rifles capable
22 of? And you answered, people can easily fire --
23 probably the untrained individual can easily, if

1 they were just told to pull the trigger as fast
2 as you can, they can probably fire six rounds in
3 a second. Do you see that?

4 A. Yes.

5 Q. Is that still your answer about how
6 fast a semi-automatic rifle can fire?

7 A. Rifle? Yeah. Yeah, absolutely.

8 Q. They can easily empty a 30-round
9 magazine in six seconds or less, right?

10 A. That would be five seconds, I think.
11 Let's see, because it's six rounds per second.
12 So 30 rounds would take as little as five
13 seconds.

14 Q. If you could turn to page 79.

15 A. Okay.

16 Q. The same basic set of questions. The
17 question is, would you agree with me that you
18 can empty a 30-round magazine from an AR-15 in
19 five or six seconds? Your answer was, easily.
20 And the question was, probably even faster than
21 that, right? And your answer was, yes. Is that
22 still your answer to those same questions?

23 A. Yes.

1 Q. Turn to page 15, please.

2 A. (Witness complies).

3 Q. The bottom of the page on line 22,
4 there's a question, sir, am I correct that you
5 don't have any data on the use or not of assault
6 weapons in self-defense? Your answer, that is
7 correct. Is that still true?

8 A. Yes.

9 Q. Next question is, is that also true
10 with respect to any data on the use of -- the
11 use or not of large capacity magazines in self-
12 defense? And your answer was, yes, that's
13 correct. Is that still correct?

14 A. Yes.

15 Q. And the next question is, am I also
16 correct that you don't have any direct knowledge
17 about the use or not of assault weapons or large
18 capacity magazines in self-defense? Your answer
19 was, yes, that's correct. Is that still
20 correct?

21 A. It is.

22 Q. Turn to page 12, please.

23 A. Okay.

1 Q. So on line 4, there's a question that
2 begins, and maybe you were predicting that I was
3 going to ask you about large capacity magazines
4 next. But just to step back, my question had
5 been whether you had done any studies focusing
6 specifically on use of assault weapons. Have
7 you? And the answer was, no, other than that it
8 is sort of a minor component of the
9 aforementioned study covering, I think, 1986 to
10 1995. But it was a secondary concern. So
11 certainly, besides that, there's nothing that
12 specifically addressed assault weapons other
13 than reviewing other people's research. Is that
14 still correct?

15 A. Yes. Except that, of course, now
16 there's more of other people to research.

17 Q. At the bottom of the page, there's a
18 question starting on line 25, you also reference
19 a study indicating the victims who use guns for
20 self-protection were less likely to suffer
21 property loss or injury. Did that study focus
22 at all on teasing out assault weapons as opposed
23 to any other kind of gun in those incidents?

1 Your answer was, no. That's still correct,
2 right?

3 A. Yes.

4 Q. And the next question is, did it look
5 at teasing out use of large capacity magazines
6 as opposed to any other magazines or types of
7 loading ammunition? Your answer was, no.
8 That's still correct, right?

9 A. It is.

10 Q. And then the next question is, are
11 you aware of any studies with respect to use of
12 firearms for self-protection and how that
13 interplays with the likelihood of suffering
14 injury or property loss that do specifically
15 look at either assault weapons or large capacity
16 magazines to the exclusion of other types of
17 magazines or firearms? And your answer was, no.
18 Is that still correct?

19 A. It is.

20 Q. Turn to page 18, please.

21 A. Okay.

22 Q. Starting on line 20, the question is,
23 do you have a belief as to whether a significant

1 portion of defensive gun users have a criminal
2 background? And it says Mr. Sweeney, objection.
3 And then it says the witness, yes. Is that
4 still true?

5 MR. PORTER: I object to the form of
6 the question. Same objection as Mr. Sweeney.
7 You can answer.

8 Q. We're only asking about whether you
9 have a belief here. I assume you still have a
10 belief?

11 A. Yes.

12 Q. Okay. With two objections, you still
13 have that belief. And then at the beginning of
14 the next page, it says, what is that? And I
15 think what he means there and what you
16 understood him to mean is what is your belief,
17 right? And you answered, I think that people
18 with a criminal background would be
19 disproportionate likely to engage in any type of
20 self-defensive action, including with firearms.
21 Is that still your answer?

22 A. Yes. Although, I wish I had made
23 it -- made the limitations of that conclusion

1 clearer. You know, what is the comparison?
2 Compared to what? And you know, what I meant
3 was compared to the rest of the population, you
4 know, the people who use the gun for
5 self-protection which is likely to be in a very
6 serious incident are more likely than the rest
7 of the population to have a criminal record.
8 But whether those who are crime victims who use
9 guns for self-protection are anymore likely to
10 have a criminal record than those who are crime
11 victims but did not use a gun for self-
12 protection, that I don't know.

13 Q. And the question is, why is that?
14 And he's asking again about the answer you did
15 give, not about the answer you just gave. And
16 your answer to his question, this was
17 Mr. Fader's question in this deposition
18 transcript is, because they are victimized more
19 often than the noncriminal population. What you
20 mean there are the criminals are victimized more
21 often than the noncriminal population, right?

22 A. Again, it's hard to recollect, you
23 know, what I had in mind as the point of

1 comparison there. I can tell you what I would
2 say about it now; but what I was thinking at the
3 time, I'm not so sure.

4 Q. So is it your view that criminals are
5 more often victimized more often than the
6 noncriminal population?

7 A. Definitely, yes.

8 Q. Is that the reason why criminals are
9 more likely to use a gun in self-defense than
10 noncriminals?

11 A. Yes. Not in comparison with other
12 noncriminal victims, but just in comparison with
13 all noncriminals as a group, victimized or not.

14 Q. Let's turn to page 50, please.

15 A. Okay.

16 Q. On line 9, there's a statement that
17 you make that says, I can say definitively the
18 vast majority of people in the population will
19 not be a victim of violent crime in their lives
20 or at least any kind of serious violent crimes
21 beyond the school yard pushing and shoving as a
22 kid. Is that still true?

23 A. Yes.

1 Q. I'd like you to turn to page 55.

2 A. (Witness complies).

3 MR. PORTER: Can we go off the record
4 for a second?

5 (Off-the-Record discussion)

6 Q. All right. What I think I need you
7 to do is go back to Exhibit 2, please.

8 A. Okay.

9 Q. And if you would look at page 4 of
10 Exhibit 2.

11 A. Okay.

12 Q. And if you look at the numbered
13 heading 1, it says, having only ten rounds to
14 fire in a situation of lawful self-defense is
15 insufficient in a significant share of defensive
16 gun use situations. Is that your expert
17 opinion?

18 A. It is.

19 Q. Turn back to Exhibit 4, page 55.

20 A. Okay.

21 Q. Starting on line 6 it says, as I
22 understand it, the first opinion that you
23 offered, beginning on page 3, having only ten

1 rounds to fire in a situation of lawful
2 self-defense will be insufficient in a
3 significant share of defensive gun use
4 situations. Is that the same opinion being
5 offered in connection with the Maryland case?

6 A. I believe it is.

7 Q. And then Mr. Fader --

8 MR. PORTER: I'm sorry to interrupt.
9 Can you repeat your question that you just asked
10 him?

11 MR. KLEIN: Is that the same opinion
12 that's being offered? I can have it read back
13 because I'm sure I'll get it wrong.

14 MR. PORTER: I believe you said it's
15 the same opinion that you're offering in the
16 Maryland case. I think you meant Massachusetts.

17 MR. KLEIN: I did. Thank you for
18 that clarification. I think you are right about
19 that.

20 MR. PORTER: Okay.

21 Q. So again, I'm sorry, I'm going to
22 reask the question because Mr. Bradley (sic)
23 pointed out I made a speaking error.

1 The opinion that you were asked about
2 in connection with your deposition in Maryland
3 is the same opinion as you're offering in the
4 Massachusetts case, right?

5 A. Yes.

6 Q. And Mr. Fader asked you, does that
7 accurately state your first opinion in this
8 case? And you answered, yes. And then he asked
9 you, do you have any empirical evidence
10 regarding the number of rounds fired by
11 individuals defending themselves with a gun?
12 And you answered, no. Is that still true?

13 A. Yes.

14 Q. And then it says, do you have any
15 anecdotal evidence regarding any incidents in
16 which an individual fired more than ten rounds
17 in self-defense? And your answer is, none that
18 I can recall right now. Can you recall any as
19 you sit here today?

20 A. No.

21 Q. And then you were asked, have you
22 ever made an attempt to look for such incidents?
23 And your answer is, no. Is that still true?

1 A. It is.

2 Q. Then he asks you, you state in your
3 report some criminal attempts can only be
4 stopped by shooting the offenders. Is that part
5 of your Massachusetts opinion as well? Do you
6 see it on page 4 at subheading C?

7 A. Yes.

8 Q. So Mr. Fader asked you about that
9 opinion, do you have any empirical evidence in
10 how many criminal attempts can only be stopped
11 by shooting the offenders? And your answer was,
12 no. Is that still true?

13 A. It is.

14 Q. Are you aware of any data on that
15 subject, question. And your answer is, no.
16 Question: Is it true then that in the vast
17 majority of self-defense cases the criminal
18 attempt is stopped just by knowing that there is
19 a gun, I'm sorry, by knowing that there is a gun
20 in the hands of the potential victim? And you
21 answered, it's certainly stopped without the gun
22 being fired, if that's what you're getting at.
23 Would that still be your answer to that same

1 question?

2 A. It would.

3 Q. Then the question is, so at least in
4 the vast majority of self-defense cases there is
5 not even a need to fire a weapon, much less to
6 hit the offender; is that right? And then your
7 answer is, well, independent of the issue of the
8 need to do so, certainly the vast majority of
9 gun uses do not involve the gun actually being
10 fired. Because the gun is fired, even included
11 warning shots only about 24 percent of defensive
12 gun uses, and it is fired at the offender in a
13 little under 16 percent of the cases. Is that
14 still your answer?

15 A. It is.

16 Q. Turn to page 75, please.

17 A. Okay.

18 Q. Question: As a general proposition,
19 do you agree that mass shootings that involve
20 the use of a high capacity magazine by a mass
21 shooter result in more injuries and more gunshot
22 wounds among victims than mass shooting events
23 that do not involve high capacity magazines?

1 Your answer is, probably. But I am cautious
2 about making those sorts of generalizations
3 based on a really small number of cases. Is
4 that still a correct answer?

5 A. It is.

6 Q. If you would turn to page 83.

7 A. (Witness complies).

8 Q. Starting on line 15, question: What
9 data do we have on how quickly mass shooters
10 change magazines during incidents? Your answer
11 is, none that I am aware of. Are you aware of
12 any data on that question now?

13 A. No.

14 Q. Page 119.

15 A. Okay.

16 Q. Starting on line 19, the question is,
17 at what distance is it that you think it doesn't
18 matter whether you are using a handgun or a
19 rifle? And your answer is, well, there is no
20 particular cutoff. It is just that the longer
21 the range, the more of a help it is to have a
22 rifle. Is that still correct?

23 A. It is.

1 Q. Let's look at page 157, please.

2 A. (Witness complies).

3 Q. Could you read to yourself the
4 testimony on page 157 and 158, up to line 14 on
5 158.

6 A. Okay.

7 (Witness reviews the document)

8 A. Okay.

9 Q. Is it still your opinion that
10 self-selected samples have no basis for yielding
11 representative samples?

12 A. Yes.

13 Q. And is it your practice not to rely
14 on studies where the sample itself is selected?

15 A. Well, I always rely on the best
16 available evidence. If there is a true
17 probability sample, I'll rely on that. But for
18 some purposes, the best available is not all
19 that great. So in cases where I don't have a
20 probability sample of some larger population,
21 I'll rely on a non-probability sample, including
22 self-selected samples but make appropriate
23 adjustments in how confident I am in the

1 findings.

2 Q. So if you were running a survey
3 yourself, would you chose to use a self-selected
4 sample?

5 A. No.

6 Q. That's because you don't consider
7 them particularly accurate?

8 A. No, they're certainly not as accurate
9 as getting a probability sample and not as
10 likely to yield results that can be generalized
11 to the larger population.

12 Q. And that's partly because someone who
13 self-selects to participate in a survey is
14 usually doing so based on an interest in the
15 issue in which the survey is being made?

16 A. Well, they're certainly likely to be
17 different in some way from the rest of the
18 population.

19 Q. And if I represented to you that a
20 survey on gun ownership issues was based on an
21 opportunity to participate that was offered by a
22 website, for example, that focused on gun
23 ownership, that wouldn't be a particularly

1 useful self-selected sample?

2 MR. PORTER: I object to the form of
3 the question.

4 A. So it's limited to people who happen
5 upon that website then?

6 Q. Yes, who happen upon that website and
7 discover the survey by participating in that
8 website.

9 A. Yeah, I would have no -- I wouldn't
10 have much confidence in findings based on such a
11 sample.

12 MR. KLEIN: Can we just take a five-
13 minute break, please.

14 MR. PORTER: Sure.

15 (Brief recess was taken from
16 3:00 p.m. to 3:08 p.m.)

17 MR. KLEIN: So I don't have any
18 further questions. Before we close, I wanted to
19 say that there's an open question about three
20 additional documents relevant to Professor
21 Kleck's study of defensive gun use. We probably
22 will want to continue to talk to you about that.
23 And if we get ahold of those documents, we may

1 want to reopen the deposition.

2 MR. PORTER: Understood.

3 MR. KLEIN: So for formal purposes,
4 it's our position that the deposition is not
5 closed at this time.

6 MR. PORTER: I understand. And I
7 reiterate our position, when you raised the
8 issue earlier, that we object to production of
9 the documents. And I'm not going to belabor the
10 point on the record, but I think we understand
11 one other.

12 MR. KLEIN: Okay.

13 MR. PORTER: And I have no questions.

14 (Deposition adjourned at 3:08 p.m.)
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CERTIFICATE

STATE OF ALABAMA)

AT LARGE)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype and the questions and answers thereto were transcribed by means of computer-aided transcription and that the foregoing represents a true and correct transcript of the testimony given by said witness upon said deposition.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

/s/ KATHY HART CANADAY, CCR, RPR

Certified 10/26/2017

Commissioner at Large

ACCR 586, Expires 9/30/2018

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I, GARY KLECK, hereby certify that I
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Page 196

1 As you read your deposition, if you have any
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DANIEL COURT REPORTING, INC.

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1 CERTIFICATE

2
3 STATE OF ALABAMA)
4 AT LARGE)5 I hereby certify that the above and
6 foregoing deposition was taken down by me in
7 stenotype and the questions and answers thereto
8 were transcribed by means of computer-aided
9 transcription and that the foregoing represents
10 a true and correct transcript of the testimony
11 given by said witness upon said deposition.12 I further certify that I am neither
13 of counsel nor of kin to the parties to the
14 action, nor am I in anywise interested in the
15 result of said cause.16
17 /s/ KATHY HART CANADAY, CCR, RPR

18 Certified 10/26/2017

19 Commissioner at Large

20 ACCR 586, Expires 9/30/2018

21 MY COMMISSION EXPIRES:

22 2/20/2018
23

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1 SIGNATURE

2
3
4 I, GARY KLECK, hereby certify that I
5 have read the transcript of my deposition, and
6 except for the corrections listed below, certify
7 that it is a true and correct transcription.8
9
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1
2
3 Please read the enclosed transcript
4 and return to my office within 30 days. It is
5 not necessary to correct punctuation. NO
6 CHANGES ARE ALLOWED TO BE MADE TO THE
7 TRANSCRIPT, ONLY ON THE ERRATA SHEET PROVIDED.8 Also, changes can only be made to your answer if
9 you feel it is not a correct word or name
10 spelling. No other changes are to be made.
11 Please read and mail back to me as soon as
12 possible.
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Thank You,

Kathy Hart Canaday, CCR, RPR

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1
2 As you read your deposition, if you have any
3 corrections to make, please itemize them below.
4 Upon completion, please sign on this errata
5 sheet so that I can return it to the proper
6 court. However, if you do not have any
7 corrections to make, sign this form and return
8 it to me within 30 days. Thank you.

9 CHANGES MADE BY THE WITNESS:

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22
23DEPONENT Gary Kleck DATE 11-20-17

49 (Pages 193 to 196)

EXHIBIT 13
TO KAPLAN DECLARATION

DANIEL COURT REPORTING, INC.

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID SETH WORMAN, et al.,

Plaintiffs,

Case No.

vs.

1:17-CV-10107-WGY

MAURA HEALEY, et al.,

Defendants.

* * * * *

DEPOSITION OF J. BUFORD BOONE, III

* * * * *

Taken before Kathy Hart Canaday, Registered
Professional Reporter, Certified Court Reporter
#586 and Notary Public for the State of Alabama,
on the 24th day of October, 2017, at 9:09 a.m.,
at the offices of Bradley, Arant, Boult,
Cummings, One Federal Place, 1819 5th Avenue
North, Birmingham, Alabama 35203.

S T I P U L A T I O N

IT IS STIPULATED and agreed by and between the parties through their respective counsel that said deposition may be taken by me on this date.

IT IS FURTHER STIPULATED and agreed that it shall not be necessary for any objections to be made by counsel to any questions, and that counsel for the parties may make objections and assign grounds at the time of the trial, or at the time said deposition is offered in evidence, or prior thereto.

IT IS FURTHER STIPULATED that notice of filing of deposition is waived.

A P P E A R A N C E S

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EXAMINATION BY:

MR. KLEIN

5

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1 I, Kathy Hart Canaday, a Certified
2 Court Reporter for the State of Alabama acting
3 as Commissioner, certify that on this date, as
4 provided by the Alabama Rules of Civil Procedure
5 and the foregoing stipulations of counsel, there
6 came before me this witness in the above cause,
7 for oral examination, whereupon the following
8 proceedings were had:

9
10 J. BUFORD BOONE, III,
11 being first duly sworn, was examined
12 and testified as follows:

13
14 EXAMINATION

15 BY MR. KLEIN:

16 Q. Good morning, Agent Boone. Would you
17 mind stating your full name and your business
18 address for the record, please?

19 A. Yes. And it's retired Agent Boone.
20 But I don't mind if you call me Agent, I just
21 don't want to give the impression that I'm still
22 employed there. My name is James Buford Boone,
23 III. And my business address is Post Office Box

3 Q. And since the address you gave is a
4 post office box, if you wouldn't mind giving
5 your home address, I would appreciate it.
6 Thanks.

7 A. Re
red
Per

9 Q. Agent Boone, is it fair to say that
10 you've been deposed before?

12 Q. How many times?

13 A. Probably less than fifteen. But I
14 don't know how many times exactly.

15 Q. Ten to fifteen is a fair range?

16 A. We'll assume ten. It depends on what
17 you mean by deposed in what sort of -- in
18 matters like this, this will be the second
19 deposition as an expert witness.

20 Q. And the other depositions you were
21 referring to were --

22 A. Criminal type things.

23 Q. -- criminal cases?

1 A. Yeah, as an agent.

2 MR. PORTER: Let him finish his
3 question just so she can get it all down.

4 THE WITNESS: Sorry.

5 Q. But not in court?

6 A. I'm not sure I understand. I've
7 testified in court.

8 Q. Right. But the depositions -- what
9 I'm asking about are depositions which would
10 typically be an opportunity for a lawyer
11 representing a party, included in a criminal
12 case, to ask you questions.

13 A. Probably less than five.

14 MR. KLEIN: Can we go off the record
15 just a second?

16 (Off-the-Record discussion)

17 Q. Agent Boone, is it fair to say you
18 understand the way this process works, the
19 process of taking a deposition?

20 A. Yes.

21 Q. You've done this before, right?

22 A. Yes.

23 Q. And you understand that I'm going to

1 ask you questions and you're under oath and
2 obligated to answer them truthfully, right?

3 A. Yes.

4 Q. A couple of other rules, just so that
5 we're clear as we go forward. One is that we
6 have to be careful about talking over each
7 other, meaning that I want to wait until you
8 complete your answers before I ask a new
9 question. And I would ask you to do the same,
10 wait for me to complete a question before you
11 give your answer, okay?

12 A. Yes.

13 Q. And I would also ask that if you
14 don't understand my question, you let me know.
15 Because if you don't let me know, I'm going to
16 assume that you understood the question. Okay?

17 A. Yes.

18 Q. Thank you. If you need a break at
19 any time, just let me know and we can take a
20 break.

21 A. Okay.

22 (Whereupon, Defendant's Exhibit 1
23 was marked for identification and

1 same is attached hereto.)

2 Q. I'm going to ask you to take a look
3 at a document that we've marked as Exhibit
4 Number 1.

5 A. Okay.

6 Q. Is that a document you've seen
7 before?

8 A. I've seen it electronically, yes,
9 sir.

10 Q. And I want to direct your attention
11 to the next to the last page at the bottom of
12 that page -- I think you're on the wrong page.
13 I'm sorry. If you go back one, the third from
14 the last page. You had it right and I had it
15 wrong. It says, the deponent is directed to
16 bring with him his file for this matter,
17 including but not limited to correspondence,
18 handwritten notes, memoranda, photographs, video
19 recordings, studies, reports, literature,
20 spreadsheets, electronic communications he has
21 reviewed or authored in regard to this matter.
22 Do you see that?

23 A. Yes, sir.

1 Q. Did you bring any documents with you
2 today?

3 A. Yes, sir, I did.

4 Q. Can you tell me what you brought in
5 here?

6 A. Would you like me to hand you the
7 whole file or would you like me to go over them
8 one by one?

9 Q. I'll just take a quick look through
10 it. Thank you.

11 (Whereupon, Defendant's Exhibit 2
12 was marked for identification and
13 same is attached hereto.)

14 Q. Let me give you a document that's
15 been labeled Exhibit 2. Could you take a look
16 at that, please?

17 A. Yes, sir.

18 Q. Is that a complete copy of the report
19 that you prepared in connection with this case?

20 A. It appears to be, yes, sir.

21 Q. And is that your signature at the
22 back? Or not all the way to the back. Your CV
23 takes up quite a number of pages at the end of

1 the document.

2 A. Yes, sir.

3 Q. You see your signature in among these
4 pages?

5 A. Yes, sir.

6 Q. So what I would like you to do, so
7 that we can talk about it a little more easily,
8 is put some page numbers on for me. If we could
9 number together, that will make our lives
10 easier --

11 A. Sure.

12 Q. -- to talk about this over the course
13 of the morning.

14 A. Yes, sir.

15 Q. So you can number the first page as 1
16 and then each page thereafter.

17 A. (Witness complies).

18 Q. If I'm not mistaken, you can stop at
19 page 15 because that's the last page before your
20 CV.

21 A. (Witness complies).

22 Q. So I've asked to you number from
23 pages 1 through 15. Is it fair to say that

1 everything after page 15 is your CV?

2 A. Yes, sir.

3 Q. And that's all the way through the
4 end of the document, correct?

5 A. Yes, sir.

6 Q. And your CV, which does have pages
7 numbered, is 36 pages, right?

8 A. Yes, sir.

9 Q. And in addition, at the beginning of
10 the document there are four pages stating your
11 qualifications, right?

12 A. Yes, sir.

13 Q. So is it fair to say that your
14 opinions in this matter start on page 5 and go
15 through page 15 as we've just numbered them?

16 A. Yes, sir.

17 Q. Thank you. Is this report -- and I'm
18 talking about pages 5 through 15, is it the same
19 as a report you prepared in a case called Kolbe
20 versus Maryland?

21 A. Similar.

22 Q. When you say similar, does that mean
23 you made some changes and updates?

1 A. I believe that I added some things.

2 Q. Is it fair to say what you added is
3 the material that starts on page 12, which is
4 specifically about Mass. General Law and then
5 additional material on page 14 and 15, which is
6 about the Attorney General's Notice of
7 Enforcement?

8 A. Yes.

9 Q. That's the added material?

10 A. Yes.

11 Q. Is everything in your opinions before
12 the added material starting on page 12, is it
13 the same as what you opined in the Kolbe case?

14 A. I believe so. I can't be certain
15 without reviewing it line by line, but it's very
16 similar.

17 Q. So basically what you did is you took
18 that opinion and you added some material about
19 Massachusetts law and provided it for use in
20 this case as well?

21 MR. PORTER: Object to the form of
22 the question. You can answer.

23 A. Right. Subject matter is similar.

1 Q. And your opinions are essentially the
2 same, correct?

3 A. Yes.

4 Q. Did you use the same material in
5 connections with an opinion that you provided in
6 any other case?

7 A. I don't believe so.

8 Q. Are there any other cases challenging
9 gun laws around the country in which you're
10 serving as an expert witness at present?

11 A. I don't believe so.

12 Q. Have you provided an opinion in
13 connection with any of the California cases
14 about large capacity magazines that are pending?

15 A. I don't believe so, but I can't
16 recall.

17 Q. Have you provided an opinion in
18 connection with a Colorado case which had to do
19 with large capacity magazines?

20 A. I don't believe so.

21 Q. Did you author an opinion or provide
22 an opinion in connection with a case that was
23 pending in Illinois concerning assault weapons?

1 A. I don't believe so.

2 Q. So what other cases can you think of
3 in which you've authored an opinion about the --
4 about a state law regulating firearms or weapons
5 magazines?

6 A. There was a case in San Francisco
7 regarding ammunition that I gave some opinion
8 on.

9 Q. Do you happen to remember the name of
10 that case?

11 A. I don't, no, sir.

12 Q. Do you remember approximately when
13 you gave that opinion?

14 A. A year and a half ago, maybe.

15 Q. And you don't know whether that case
16 is still pending?

17 A. I do not.

18 Q. Have you been deposed in that case?

19 A. I have not.

20 Q. Thank you. We talked a little bit
21 about the case Kolbe versus Maryland in which
22 you issued essentially these same opinions. Did
23 you work with the same lawyers that you're

1 working with in this case?

2 MR. PORTER: I object to the form of
3 the question, but you can answer.

4 A. Yes.

5 Q. You worked with the same law firm?

6 A. Yes.

7 Q. That's the Bradley law firm?

8 A. Yes.

9 Q. Did you work specifically with
10 Mr. Porter?

11 A. Yes.

12 Q. Did you work with Mr. Sweeney as
13 well?

14 A. Yes.

15 Q. So can you explain your understanding
16 of what the case in which you issued this report
17 is about? And when I say this report, obviously
18 I mean Exhibit Number 1 -- Exhibit Number 2.
19 Let me just start the question again so that
20 it's clearer in the record. Apologies.

21 So can you give me your understanding
22 of what the case is about in which you issued
23 this expert report, Exhibit Number 2?

1 A. The Massachusetts case?

2 Q. Yes.

3 A. It's restrictions on firearms and
4 magazines or firearm feeding devices.

5 Q. Did you review the complaint in this
6 matter?

7 A. Yes.

8 Q. Did you review the answer of the
9 Commonwealth?

10 A. What do you mean the answer of the
11 Commonwealth?

12 Q. We refer to ourselves in
13 Massachusetts as a Commonwealth rather than a
14 state, so.

15 A. Right. But I recall documents, but I
16 don't recall reading something that said it was
17 the answer of the Commonwealth.

18 Q. The answer of the Attorney General?

19 A. The answer to the complaint?

20 Q. Yes.

21 A. I don't remember if I read her answer
22 or not. I read what was provided to me.

23 Q. And the complaint was provided to

1 you, but the answer was not?

2 A. I don't know whether it was or not.
3 I don't recall.

4 Q. What else did you review that's
5 relevant to the Massachusetts case?

6 A. My report, obviously, and the things
7 contained in the file that I brought to you.

8 Q. Did you review any deposition
9 testimony in connection with the case?

10 A. Yes.

11 Q. Whose deposition testimony?

12 A. Oh, I don't know his deposition. I
13 reviewed a report, not a deposition. A report
14 of -- Urgealitis, does that sound right?

15 Q. Yes. So you reviewed his report?

16 A. Yes.

17 Q. And did you offer any additional
18 opinions after reading his report?

19 A. Opinions about the case --

20 Q. Yes.

21 A. -- or opinions about his report?

22 Q. About his report?

23 A. I offered opinions about his report.

1 Q. Have they been provided to counsel in
2 this case?

3 A. Yes.

4 Q. Do you know if the expectation is
5 that you're going to provide an additional
6 document in connection with this case that will
7 be used in court?

8 A. I don't know. I don't have an
9 expectation.

10 Q. What's your understanding of the
11 Massachusetts Law of Self-Defense?

12 A. Can I add one back? Because we
13 didn't finish. You asked about all the reports
14 I reviewed. I reviewed a report of a doctor, I
15 believe, as well.

16 Q. Dr. Colwell?

17 A. That sounds familiar, yes, sir.

18 Q. And did you have opinions about his
19 report as well?

20 A. Yes.

21 Q. And did you share those?

22 A. Yes, I did.

23 Q. Can you tell me your understanding of

1 the Massachusetts Law of Self-Defense?

2 A. I don't have a true understanding of
3 Massachusetts Law of Self-Defense.

4 Q. Have you ever reviewed the
5 Massachusetts Law of Self-Defense?

6 A. I don't believe I have.

7 Q. Which Massachusetts laws have you
8 reviewed?

9 A. This one.

10 Q. When you say this one, what do you
11 mean?

12 A. 140, Section 121.

13 Q. Any other laws?

14 A. Not that I can think of, no, sir.

15 Q. And I assume you also reviewed the
16 Notice of Enforcement that you provided opinions
17 on, correct?

18 A. Yes.

19 Q. That's the Attorney General's Notice
20 of Enforcement?

21 A. Yes, sir.

22 Q. Thank you. So if we could go to the
23 first page of your CV very briefly.

1 A. (Witness complies).

2 Q. You have a degree from the University
3 of Alabama?

4 A. Yes, sir.

5 Q. Is that a four-year degree?

6 A. Yes, sir.

7 Q. And what does a degree in General
8 Management at the University of Alabama entail?

9 A. Business school.

10 Q. Do you have any science degrees of
11 any kind?

12 A. No, sir.

13 Q. Have you ever been trained in
14 scientific methods?

15 A. On-the-job training when I was
16 running Ballistic Research Facility.

17 Q. Self-taught for the most part?

18 A. Well, there was people that taught
19 me, but it was all done in-house. Well, it
20 started in-house. I have had other training as
21 well, as you can see in my CV.

22 Q. Thank you. It's my understanding
23 that members of your family owned a newspaper

1 chain; is that right?

2 A. Newspaper management group.

3 Q. What's the name of that?

4 A. Boone Newspapers, Incorporated.

5 Q. Do you have any role in that
6 newspaper business?

7 A. I'm a director of Boone Newspapers.

8 Q. Is that a family-owned business?

9 A. Yes.

10 Q. How long have you been a director?

11 A. Mid '80s, I suspect. I don't recall
12 when we set that up. But it was prior to my
13 employment with the FBI.

14 Q. So can you describe the areas in
15 which you have special expertise that's relevant
16 to the Massachusetts case?

17 A. General firearms and wound
18 ballistics, internal, external, and terminal
19 ballistics.

20 Q. What do you mean by general firearms?

21 A. I have an extremely thorough
22 knowledge of most matters dealing with firearms;
23 the way they function, with training individuals

1 to use them, their appropriateness for certain
2 situations. I have conducted training of many,
3 many people on the use of firearms and the
4 selection of firearms for various circumstances.

5 Q. And can you describe what you mean by
6 wound ballistics?

7 A. What a projectile does to human
8 tissue.

9 Q. How do you -- what's the source of
10 your understanding of wound ballistics?

11 A. The time that I spent as the
12 Supervisory Special Agent with oversight of the
13 Ballistic Research Facility at the FBI.

14 Q. Did you actually examine patients in
15 this context?

16 A. I have examined human tissue, not
17 live patients.

18 Q. What context would you have examined
19 human tissue with outside of a live patient?

20 A. Cadavers. And I have examined animal
21 tissue.

22 Q. Approximately how many times have you
23 examined human tissue?

1 A. Once.

2 Q. And what was the circumstances in
3 which that examination took place?

4 A. That was looking at the anatomy of
5 human beings. And those were not gunshot
6 wounds. But that was looking at human anatomy,
7 cross-sections of the head, for example, to
8 locate structures.

9 Q. You've never actually examined human
10 tissue for gunshot wounds, right?

11 A. No, I have not.

12 Q. It's correct to say you're not a
13 lawyer, right?

14 A. Correct.

15 Q. And that you're not here to offer
16 legal opinions, right?

17 A. Correct.

18 Q. To the extent you offer any legal
19 opinions, the court is free to disregard them,
20 right?

21 MR. PORTER: Object to the form of
22 the question. You can answer the question.

23 A. Correct.

1 Q. And you're not a doctor, right?

2 A. Correct.

3 Q. And to the extent you offer medical
4 opinions, the court would be free to disregard
5 them, right?

6 MR. PORTER: Object to the form of
7 the question. You can answer.

8 A. Correct.

9 Q. And you're not offering personal
10 opinions in connection with this matter, right?

11 A. I'm not sure I understand.

12 Q. You're not offering personal opinions
13 except that they are based on your experience as
14 an expert in wound ballistics or in general
15 background on guns?

16 MR. PORTER: Object to the form of
17 the question. You can answer.

18 A. I'm not sure you can separate the
19 two.

20 Q. So how would -- what kind of personal
21 opinions would you say that you've offered in
22 this matter?

23 MR. PORTER: Object to the form of

1 the question. But you can answer.

2 A. Based on my experience, personal
3 experience from conducting firearms training and
4 shooting of animals and examination of animals
5 for the wound ballistics to see what the
6 projectiles did to the tissue and from my own
7 use of firearms, it would be difficult to
8 separate personal opinion from professional
9 opinion.

10 Q. In what context did you shoot at
11 animals?

12 A. In hunting and in eradication for
13 research.

14 Q. So that was out in the field in
15 uncontrolled conditions, right?

16 A. Right.

17 Q. Have you ever conducted any
18 scientific experiments on animals to study wound
19 tissue?

20 A. No, not controlled.

21 Q. So in the context of your time in the
22 field, I assume hunting is what we're talking
23 about for the most part, right?

1 A. And eradication. Nuisance animals
2 that needed to be dealt with.

3 Q. So if you shot something, you'd take
4 a look at the wounds, right?

5 A. We would examine the wounds, yes,
6 sir.

7 Q. And did you apply any scientific
8 evaluation of the wounds in that context?

9 A. One of the individuals that worked
10 under my supervision was a veterinarian, and we
11 had him do postmortem examinations and describe
12 the wounding.

13 Q. So I want to talk a little bit about
14 your time working in the FBI's Ballistics
15 Research Facility. There was a period of time
16 there when you were the only full-time employee;
17 is that right?

18 A. Correct.

19 Q. What period of time?

20 A. That would have been April of 1997
21 until sometime I believe the fall of '98 when
22 Mr. Marshall joined me. Those are approximate.
23 The ending day is an approximate; the starting

1 day is pretty exact. Actually back up. I
2 started in April and the man who was there left
3 two months later. So it would have been June
4 when I was by myself.

5 Q. So if you could look at what we've
6 labeled as page 2 and 3 of your report, there's
7 something that's confusing me a little bit.

8 A. Yes, sir.

9 Q. So if you look at the next to last
10 paragraph on page 2, it says, I was transferred
11 to the Ballistics Research Facility of the FTU
12 on April 15th, 1997. Do you see that?

13 A. Yes, sir.

14 Q. And then on the next page, in the
15 second full paragraph, it says, I was the only
16 full-time person at the BRF until a support
17 person, non-agent, was assigned as an
18 Engineering Technician of Ballistics, ETB, in
19 the last quarter of 1988. Should that be 1998?

20 A. Yes, it should be.

21 Q. Thank you.

22 A. That's embarrassing.

23 Q. And that person was someone named

1 Mr. Marshall; is that right?

2 A. Yes, sir.

3 Q. And he was not an FBI agent; is that
4 right?

5 A. Correct.

6 Q. What was his -- he was a civilian?

7 A. We was a support employee.

8 Q. And what was his job function?

9 A. Engineering technician of ballistics.

10 Q. And how long was it just the two of
11 you?

12 A. I don't recall.

13 Q. Do you remember when any other
14 individuals were hired to work at the BRF?

15 A. We had a contractor that worked with
16 us some, and then that contractor was replaced
17 by another contractor.

18 Q. Anyone else?

19 A. Then my replacement came in prior to
20 my retirement.

21 Q. Approximately when was that?

22 A. My replacement came in, I believe, in
23 the first quarter of 2011.

1 Q. When did you retire?

2 A. August 31 of 2012.

3 Q. So for the majority of the time
4 between 1997 and 2012 when you retired, it was
5 you and Mr. Marshall working together?

6 A. Mr. Marshall did work with me from
7 the time he showed up until my retirement.

8 Q. So in that unit, it was just the two
9 of you other than the contractor you mentioned?

10 A. Two different contractors, yes, sir.

11 Q. And you mentioned that there was a
12 veterinarian who worked on ballistic issues with
13 you?

14 A. One of the contractors was a
15 veterinarian.

16 Q. Was that just a coincidence or was he
17 hired specifically as a veterinarian on a
18 contract for the BRF?

19 A. We worked to get him at BRF. He was
20 a contractor with Firearms Training Unit. But
21 based on his medical background, we pushed to
22 get him brought down to us.

23 Q. Does the BRF still exist?

1 A. Yes.

2 Q. Who runs it now?

3 A. Supervisory Special Agent Scott
4 Patterson. I believe it's A. Scott Patterson,
5 the first initial A.

6 Q. Is it still just him and one other
7 person for the most part?

8 A. No, sir. They've got a couple of
9 more people there now.

10 Q. When you were Supervisory Special
11 Agent at the BRF, who did you report to?

12 A. The last supervisor was Unit Chief
13 William Kochzek.

14 Q. And what unit was he the chief of?

15 A. The Defensive Systems Unit.

16 Q. Do you know how to spell Kochzek?
17 Because there's someone who's going to ask.

18 A. K-O-C-H-Z-E-K.

19 MR. PORTER: Just like it sounds.

20 THE WITNESS: Common spelling.

21 Q. And tell me again what was the unit
22 he was chief of.

23 A. Defensive Systems Unit.

1 Q. About how many people worked in the
2 Defensive Systems Unit at the FBI when you were
3 there?

4 A. I don't recall. It encompassed the
5 gun vault personnel, the BRF, and then some
6 other support people.

7 Q. Was it more than a hundred?

8 A. No.

9 Q. More than 20?

10 A. Potentially. I --

11 Q. In that range, around 20?

12 A. It's something -- yes, sir.

13 Q. Thank you. And what was your reason
14 for leaving the FBI?

15 A. I wanted to spend time with my
16 father, and I was eligible to retire. And I had
17 hit the pay cap, which meant I would never get
18 another raise. There was no financial incentive
19 to stay in the government. And life is too
20 short not to spend it with the people you care
21 about.

22 Q. When you worked at the FBI, where
23 were you located?

5 A. I was a field agent. And I was the
6 principal firearms instructor in charge of all
7 firearms training from the New Haven division.

Redacted

A 5x5 grid of black squares of varying sizes, arranged in a pattern that resembles a stylized letter 'A' or a similar abstract shape. The squares are arranged in a way that they form a central vertical column, with squares branching out to the left and right, creating a triangular or 'A' shape. The squares are of different sizes, with some being larger than others, and they are arranged in a way that they are not perfectly aligned, giving it a hand-drawn or abstract feel.

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1 Q. [REDACTED]
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8 Q. I believe some of this, including
9 your home address could fairly be marked
10 confidential.

11 MR. PORTER: It will be under the
12 protective order.

13 MR. KLEIN: Yeah, okay.

14 MR. PORTER: And I can't imagine that
15 anybody would come to your home with malice
16 aforethought anyway, Buford, knowing what they
17 know about you.

18 THE WITNESS: I would pray they
19 wouldn't.

20 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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Information

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Year	2000	2001	2002	2003	2004	2005
1	100	100	100	100	100	100
2	100	100	100	100	100	100
3	100	100	100	100	100	100
4	100	100	100	100	100	100
5	100	100	100	100	100	100
6	100	100	100	100	100	100
7	100	100	100	100	100	100
8	100	100	100	100	100	100
9	100	100	100	100	100	100
10	100	100	100	100	100	100
11	100	100	100	100	100	100
12	100	100	100	100	100	100
13	100	100	100	100	100	100
14	100	100	100	100	100	100
15	100	100	100	100	100	100
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10 of 10

Redacted information

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Age Group	Percentage
18-24	10%
25-34	25%
35-44	35%
45-54	20%
55-64	15%
65-74	10%
75-84	5%
85-94	5%
95+	5%

Age Group	Percentage
18-24	10%
25-34	15%
35-44	25%
45-54	30%
55-64	20%
65-74	10%
75+	10%

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Abstract

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Q.

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1 Redacted Personal Information

2 Q. You understand the Massachusetts law
3 has a definition of large capacity magazines?

4 A. I do.

5 Q. What is that?

6 A. I believe it was, as you said, over
7 ten rounds. Which makes me question where the
8 number ten came from.

9 Q. So explain what you mean by that.

10 A. Explain what I mean by where the
11 number ten came from?

12 Q. No, explain what you mean by your
13 rejection of the concept of large capacity
14 magazine?

15 A. A large capacity magazine to me would
16 be one that held more ammunition than the
17 firearm was originally designed to hold. For
18 example, if you have a handgun that was designed
19 to hold 15 rounds of ammunition, a 10-round
20 magazine would be a reduced capacity, a 15-round
21 magazine would be a standard capacity, and a
22 20-round magazine would be a large capacity.

23 Q. So if you had a gun designed to hold

1 a 15-round magazine, it would also equally well
2 hold a magazine of ten rounds, correct?

3 A. Assuming the external dimensions were
4 the same, yes.

5 Q. And would equally well hold a
6 magazine of 20 rounds, correct?

7 A. Assuming the dimensions were
8 appropriate, but the 20-round mag would likely
9 stick out further than the firearm was
10 originally designed.

11 Q. And the reality is you could get a
12 magazine for almost any gun in any of those
13 sizes that fit that particular gun, right?

14 MR. PORTER: Object to the form of
15 the question. But you can answer.

16 A. They could be designed. I don't
17 suspect all guns have those type magazines
18 already designed for them. But yes, you could
19 even design a handgun to hold only one cartridge
20 in the magazine.

21 Q. The gun would function the same
22 regardless of whether it had a 10 or 15 or
23 20-round magazine inserted in it, correct?

1 A. What do you mean by function?

2 Q. It would fire until the magazine was
3 empty, right?

4 A. Correct, as long as it didn't
5 malfunction. But you would have to pull the
6 trigger for each shot.

7 Q. Have you ever fired a machine gun?

8 A. Yes. By machine gun, I should ask,
9 do you mean belt fed or a box magazine?

10 Q. I mean a gun that fires automatically
11 for today's purposes. Is that okay?

12 A. Yes.

13 Q. We can use that definition?

14 A. Yes, sir, I have.

15 Q. In what capacity did you fire a
16 machine gun?

17 A. In my capacity as FBI Special Agent,
18 as a firearms instructor, and also prior to that
19 when -- I don't remember where I was, but I was
20 allowed to go shoot with a police department and
21 they had some fully-automatic weapons.

22 Q. You don't remember what police
23 department that was?

1 A. I think it was Tuscaloosa Police
2 Department.

3 Q. About when was that?

4 A. When I was in high school. Oh, and I
5 fired with an Alabama State Trooper a machine
6 gun.

7 Q. In what capacity did you do that?

8 A. As a friend and he was training me on
9 firearms.

10 Q. So is it fair to say you've had some
11 training in the use of machine guns?

12 A. Yes, sir.

13 Q. Can you describe the training?

14 A. Standard FBI training. I had
15 training from Sergeant Jim Collins when I was in
16 high school on how to handle a manipulating
17 control full-automatic fire and then in the FBI
18 standard firearms training.

19 Q. Was that training helpful to you to
20 understand how to use a firearm?

21 A. Yes.

22 Q. Did you also have training on when
23 the use of an automatic firearm makes sense?

1 A. We had some training. I also from my
2 training determined when use of a firearm --
3 when an automatic setting would make sense.

4 Q. Was that FBI related training?

5 A. Yes, sir, when I started training for
6 confrontations with human adversaries, that's
7 when that came about.

8 Q. Are you a member of the National
9 Rifle Association?

10 A. Yes, I am.

11 Q. How long have you been a member?

12 A. I don't recall. But I became a life
13 member probably in the mid '80s, and I've
14 upgraded my membership a few times since then.

15 Q. What does it mean to upgrade a life
16 membership?

17 A. There are different levels, like
18 patron and benefactor.

19 Q. What level are you at now?

20 A. I believe I'm benefactor, but I'm not
21 positive.

22 Q. What's required to be a benefactor of
23 the NRA?

1 A. I think it's just paying your dues.
2 I believe, I'm not sure.

3 Q. Higher level of dues?

4 A. Yes, sir.

5 Q. Do you know how much the dues are to
6 be a benefactor?

7 A. I don't recall, no.

8 Q. Is it in the thousands of dollars?

9 A. Total, probably, if you add them all
10 together. What you pay for life membership and
11 go to patron and go to benefactor, I believe it
12 would be.

13 Q. Is it your understanding that the NRA
14 is paying the costs associated with this case?

15 A. No, sir.

16 Q. Meaning they're not paying the cost
17 or you don't know?

18 A. Bradley, Arant, Boult, Cummings is
19 who paid me --

20 Q. Who's paying your bills?

21 A. -- in the previous case and I assume
22 paying me in this one, yes, sir.

23 MR. PORTER: We'll see how you do

1 today.

2 Q. What's your hourly rate for this
3 case?

4 A. \$700.

5 Q. Have all your bills been paid up till
6 now?

7 A. I've only submitted one invoice in
8 this case. And there may be a check waiting in
9 the mailbox. I'm not sure.

10 Q. How large was the invoice?

11 A. I don't recall. I think it was
12 10,000 something.

13 Q. About how many hours have you worked
14 on this case?

15 A. I would have to do the math for you
16 to figure that out. \$700 an hour.

17 Q. And you have no sense of who might be
18 paying Bradley, Arant for their representation
19 of the Plaintiffs in this case?

20 A. You've just given me some sense of
21 it, but that would be logical to assume.

22 Q. It would be logical to assume that
23 the NRA is paying Bradley, Arant for this case?

1 MR. PORTER: Object to the form of
2 the question. You can answer.

3 A. They're the one that -- well, they're
4 one of the institutions that fight for our
5 constitutional rights, yes, sir, it would be
6 reasonable to believe that.

7 Q. And when you said fight for our
8 constitutional rights, you mean Second Amendment
9 rights?

10 A. Yes, sir.

11 Q. So is it fair to say you would
12 support the NRA's views about what the Second
13 Amendment means?

14 A. I'd say most of them. I would have
15 to look at all of their views one by one to tell
16 you whether I support them all, but probably.

17 Q. Are you aware of any views that the
18 NRA has expressed that you don't support?

19 A. No, sir.

20 Q. So everything you know about, you do
21 support?

22 A. Yes, sir.

23 Q. When you say fight for our rights,

1 you're including yourself among the people who
2 are fighting for those type of amendment rights?

3 A. All citizens of the United States.

4 Q. Have those rights?

5 A. All citizens of the United States
6 have those rights unless they have done
7 something to give up those rights; for example,
8 if they've been convicted of a felony.

9 Q. And do you consider yourself among
10 the people that are fighting for those rights?

11 A. Yes, sir. I fight for all
12 constitutional rights, whether I agree with them
13 or not. It's part of the oath I swore.

14 Q. But in particular, you've focused
15 your career since you left the FBI in fighting
16 for constitutional rights under the Second
17 Amendment, right?

18 A. Yes, sir.

19 Q. Thank you. You've trained on all the
20 weapons that you were authorized to use at the
21 FBI?

22 A. Yes, sir.

23 Q. And was that a requirement at the FBI

1 that you train on the weapon before you can use
2 it?

3 A. Yes, sir.

4 Q. Were you authorized to use AR-15s at
5 the FBI?

6 A. Yes, sir.

7 Q. Can you describe the training you had
8 on the AR-15?

9 A. Well, we had function training and
10 accuracy training, how to reload it when it's
11 appropriate to select it, the terminal
12 ballistics of the ammunition that we used.

13 Q. So is that five different things?
14 Function, training --

15 A. I didn't count them. But that --

16 Q. Let's go back and have that read back
17 because I want to be sure I have a list so we
18 can go through them one at a time, if that's
19 okay.

20 A. And that may not be all-inclusive.
21 General training would include everything;
22 storage of the firearm within the FBI policies,
23 deadly force training, which is not specific to

1 any individual firearm. It applies to all of
2 them.

3 MR. KLEIN: So before we go any
4 farther, can we go off the record for just a
5 minute?

6 (Off-the-Record discussion)

7 (The desired portion was read by the
8 court reporter)

9 MR. KLEIN: Thank you. Go back on
10 the record.

11 Q. Can you describe what you mean by
12 function training?

13 A. Yes, sir. How the firearm functions,
14 how it operates, what to do when it doesn't
15 function, how to clear the malfunction and get
16 it back into operation.

17 Q. And accuracy training?

18 A. Accuracy so far as being able to
19 shoot it accurately, yes, sir. Not the accuracy
20 capability of the firearm.

21 Q. And that accuracy you're talking
22 about is shooting training, right?

23 A. Yes, sir.

1 Q. Practice shooting?

2 A. Yes, sir.

3 Q. Mostly at a range, right?

4 A. Yes, sir.

5 Q. About how many times did your
6 training require that you go to the range and
7 shoot an AR-15?

8 A. Wow. We qualified four times a year,
9 all agents qualified four times a year. I
10 believe you were required to qualify with long-
11 arms twice a year. So if you had an issue with
12 the AR-15 or personally owned AR-15, I believe
13 you're required to shoot it twice a year. You
14 were encouraged to shoot it all four times a
15 year. And that's training received as opposed
16 to training given, correct?

17 Q. Yes.

18 A. Yes, sir, I believe that's correct.
19 It's been a while.

20 Q. And the reason for the FBI's
21 qualification requirements is to make sure that
22 people knew how to use their weapons and were
23 using them accurately?

1 A. Correct. To make sure you could
2 safely function it, that you were accurate with
3 it. And in all firearms training or most
4 firearms training, we also included deadly force
5 training, defensive tactics training. In the
6 field anyway, in Quantico, not necessarily.

7 Q. So let's talk about deadly force
8 training. We may want to come back to some of
9 the others, but let's skip ahead since it's come
10 up again. What does deadly force training
11 consist of?

12 A. When the FBI policy authorizes you to
13 utilize deadly force. And the FBI policy, by my
14 understanding, is more restrictive than the
15 constitutional requirements.

16 Q. In your mind there's constitutional
17 requirements that apply to when you can use
18 deadly force?

19 A. Right.

20 Q. So what are the FBI's requirements
21 for use of deadly force?

22 A. Simplistically, in defense of self
23 and others.

1 Q. So you're simplifying a more
2 complicated policy?

3 A. It's a longer policy and I don't
4 recall exactly what it was. But you're allowed
5 to use deadly force in defense of yourself or
6 others to stop a threat of death or grievous
7 bodily harm to yourself or others.

8 Q. And so would that apply, for example,
9 if you were going to engage in an assault on a
10 criminal's hideout?

11 A. We call them raids. And we go to a
12 criminal's hideout to arrest the criminal. And
13 we would take as many agents as we thought we
14 could and we would try to overcome them with
15 speed and surprise and violence of action, such
16 as opening the door, in an attempt to not have
17 to use deadly force.

18 Q. But the context that you might use
19 deadly force is if you felt at risk --

20 A. Only --

21 Q. -- in that raid, correct?

22 A. Only defensively, only if we were
23 threatened. Not offensively.

1 MR. PORTER: Make sure that he
2 finishes his question before you answer.

3 THE WITNESS: I'm sorry.

4 MR. PORTER: We just don't want to
5 crosstalk.

6 Q. It's hard sometimes. It's an
7 interesting conversation, so I understand why --

8 A. We don't do this every day.

9 Q. You just did it again, for whatever
10 it's worth. I don't mind that much, but the
11 reporter minds --

12 MR. PORTER: You should be less
13 charming.

14 MR. KLEIN: Now Jay has done it, too.

15 MR. PORTER: I don't want to be left
16 out.

17 MR. KLEIN: All right. Let's do our
18 best not to talk over each other. Although if
19 it happens, it happens.

20 Q. So in the context of the raid, if you
21 felt endangered, you believe the FBI's policy
22 would be to allow you to use deadly force in
23 response, correct?

1 A. Correct. If myself or others were
2 endangered. It was not just endangering me,
3 it's myself or other innocents.

4 Q. And so that might apply in the
5 context, say, of storming a compound where
6 hostages are held? It's another form of raid
7 you might have engaged in at the FBI, right?

8 A. I don't believe I did a hostage
9 rescue.

10 Q. But the FBI might participate in
11 hostage rescues, right?

12 A. Correct.

13 Q. If they did, the same rule would
14 apply because there might be other people, the
15 hostages, who would be at risk, right?

16 A. Correct.

17 Q. Are you aware of any circumstances in
18 which civilians participated in a raid like
19 that?

20 A. Not on the entry, no, sir.

21 Q. And are you aware of any
22 circumstances where civilians participated in
23 raids with the FBI in any way?

1 A. I don't have personal knowledge. I
2 can suspect some instances where there might
3 have been biohazards where they may have taken
4 civilians in with them after the initial
5 securing of the area.

6 Q. Civilians who were trained in
7 biohazards?

8 A. Right. Which would be part of the
9 raid in my mind.

10 Q. But are you aware of circumstances
11 where the FBI authorizes civilians to use deadly
12 force to participate in a raid conducted by the
13 FBI?

14 A. By civilian, what do you mean?

15 Q. Someone who is not a law enforcement
16 officer of any kind.

17 A. No.

18 Q. Meaning no, that wouldn't happen?

19 A. No. I'm not aware of that happening,
20 no, sir.

21 Q. Thank you. So your training on the
22 AR-15 also included training on situations in
23 which use of that gun was most appropriate?

1 A. Yes.

2 Q. Which part of the training program
3 was that?

4 A. The firearms training.

5 Q. General firearms training?

6 A. Specifically with the AR-15.

7 Q. But I think you mentioned something
8 that you referred to as appropriateness
9 training. That's part of the general firearms
10 training, correct?

11 A. Yes, sir. In general firearms
12 training we talk about using the most effective
13 firearm and the one you're the most accurate
14 with.

15 Q. And sometimes that would be the
16 AR-15?

17 A. I can't imagine a situation where the
18 AR-15 wouldn't be more accurate than a handgun
19 or more effective than a handgun.

20 Q. Can't imagine any situation at all?

21 A. No, sir. Having shot both many
22 times, I'm far more accurate with an AR-15. I
23 don't know of anyone that can shoot a handgun

1 more accurately than they can shoot the AR-15.

2 And with proper projectile selection, the

3 terminal ballistics are superior.

4 Q.

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Person 1

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Abstract

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Q. How fast can a typical individual

18

change an ammunition magazine?

19

A. What do you mean by typical? A

20

typical FBI agent or --

21

Q. Give me a range of rates it would

22

take to change a magazine.

23

A. Someone who has never seen the

1 firearm, it might take minutes; whereas, anyone
2 who has received training should take a few
3 seconds.

4 Q. Few being?

5 A. Three.

6 Q. Three?

7 A. Or less.

8 Q. Can you change a magazine in three or
9 less?

10 A. I'm quite confident I can.

11 Q. And does that depend on having the
12 magazine that you're swapping into the gun near
13 at hand?

14 A. Well, of course. If it was across
15 the room, it would take me longer.

16 Q. So it would depend on where you have
17 the magazine stored, right?

18 A. Correct.

19 Q. It would take longer if the magazine
20 weren't at hand?

21 A. Correct.

22 Q. Where would you keep the magazine if
23 you intended to change it in that three or less

1 time frame?

2 A. Either in a magazine pouch on my belt
3 or in a pocket.

4 Q. You would have to wear the magazine
5 pouch in order to have magazines available to
6 you on your person or put one in your pocket
7 before you picked up the gun, right?

8 A. You could tuck it in your belt. You
9 could do that after you pick up the firearm.

10 Q. And you can reach into a pocket, pull
11 a magazine, take the magazine out of a gun and
12 put the new one in in three seconds or less?

13 A. It depends on where the pocket is.
14 But I would assume so, yes.

15 Q. And you can do that consistently?

16 A. I believe I can, yes.

17 Q. Is that based on training?

18 A. I believe it is, yes.

19 Q. And practice?

20 A. Yes.

21 Q. Not everyone has that training and
22 practice, right?

23 A. I would assume they don't.

1 Q. And it's possible when you change a
2 magazine to fumble it, correct?

3 A. Of course it is.

4 Q. And in that context, it would take
5 longer than three seconds, correct?

6 A. Well, it depends on how badly you
7 fumbled it now, wouldn't it?

8 Q. If you attempt to put it in the gun
9 and you don't hit the magazine port correctly,
10 it would take a little longer to get it locked
11 in place, right?

12 A. Longer than if you hit it correctly.
13 But I can't say it would take longer than three
14 seconds.

15 Q. Are you familiar with the device
16 called a bump stock?

17 A. I am now.

18 Q. When you say now, what do you mean?

19 A. After the recent media. I was aware
20 of bump stocks but had never handled one or
21 investigated how they functioned. I have a more
22 thorough understanding of how they function now.

23 Q. So when you say the recent media, you

1 stock yourself?

2 A. No.

3 Q. Have you seen a bump stock?

4 A. Not physically in person. I've seen
5 them on the news media and on the internet,
6 watched a video on YouTube.

7 Q. What's your understanding about a
8 bump stock's function?

9 A. They give you a shelf to place your
10 trigger finger on and that the stock and the
11 shelf itself reciprocates with the functioning
12 of the firearm. You're required to push forward
13 with your support hand, so as you start, the
14 firearm is pulled back into your shoulder, you
15 slam your support hand forward, bringing the
16 trigger in contact with your trigger finger.
17 Based on the recoil, the firearm reciprocates
18 back and forth, bringing the trigger in contact
19 to your finger for each subsequent shot.

20 Q. And does that allow a shooter who has
21 been trained or has used a bump stock to fire
22 more rapidly than you could typically fire with
23 a semi-automatic weapon?

1 A. That's what they appear to show on
2 the video. I would not want to comment on that
3 unless I'd actually fired one.

4 Q. Did you also watch video of the Las
5 Vegas incident?

6 A. Yes.

7 Q. Did you hear the sounds of the
8 gunshots in that video?

9 A. I did.

10 Q. Was it your understanding that the
11 sounds of the gunshots in the video were more
12 rapid than typically could be fired with a semi-
13 automatic weapon?

14 A. They sounded more rapid and more --
15 they had more longevity than you might expect.
16 They did not sound like someone placing shots
17 precisely.

18 Q. So you would have no reason to
19 quarrel with the media report saying that the
20 shooter in Las Vegas used a bump stock with his
21 weapon?

22 A. I would have no reason to quarrel
23 with that. But the media reports have shown not

1 to be correct. They've gone back and corrected
2 themselves on a couple of issues. I just don't
3 know until we see the actual facts.

4 Q. What are you referring to
5 specifically?

6 A. The security guard and the timing of
7 when he was shot by the subject.

8 Q. But not the reports of the shooting
9 on the folks who were at the concert that day?

10 A. I haven't looked into it
11 significantly, no, sir.

12 Q. But you're not aware of corrections
13 that have been made to the way in which the
14 shooter attacked the individuals who were
15 attending that concert that evening?

16 A. No, I'm not.

17 Q. You're not aware?

18 A. I'm not aware, no, sir. I haven't
19 looked into it. It was a horrible tragedy. I
20 formed my own opinions about it and it's...

21 Q. Is it your understanding that the
22 shooter in Las Vegas used one or more AR-15s in
23 connection with --

1 A. That's what the media --

2 Q. -- this incident?

3 A. AR-15 type. That's what the media
4 has said, yes, sir.

5 Q. Do you have any reason to disagree
6 with that based on what you know?

7 A. I do not.

8 Q. Is it your opinion that civilians
9 should be allowed to modify their guns to use
10 bump stocks if they so choose?

11 A. If they so choose. I don't -- I
12 believe it's legal. I may not like it, but I
13 believe it's legal.

14 Q. You believe it is legal?

15 A. I believe it is legal, yes, sir.

16 Q. So there's nothing that restricts
17 civilians from using bump stocks with their guns
18 if they so choose?

19 A. Not currently.

20 Q. When you say you may not like it,
21 would you favor regulation of bump stocks?

22 A. I'm not in favor of firing more
23 rapidly than you can acquire a target, which is

1 probably the reason that I rarely, if ever,
2 operate with the switch on full automatic.

3 Q. Doesn't Las Vegas demonstrate that
4 you can acquire a target very quickly if the
5 target is in a large group of people?

6 A. If the target is large enough, you
7 can acquire it quickly, of course. That was a
8 very large target.

9 Q. So does that mean that you would
10 favor allowance of use of bump stocks in
11 connection with targets like the crowd in Las
12 Vegas?

13 MR. PORTER: Object to the form of
14 the question. I'm not sure I understand the
15 question.

16 Q. You can acquire targets very quickly
17 in a large crowd, correct?

18 A. If the crowd is your target, the
19 larger the crowd, the easier it is to acquire.

20 Q. So firing --

21 A. That's a terrible thing to think
22 about and it's upsetting that you would look at
23 it that way. It makes me wonder what you're

1 thinking of doing.

2 Q. What do you mean by that?

3 A. You sound like you've contemplated
4 how to hurt people.

5 MR. KLEIN: Let's take a break.

6 (Brief recess was taken from
7 10:11 a.m. to 10:22 a.m.)

8 Q. So we were talking about a device
9 called the bump stock before the break. You
10 understand that there are civilians who own bump
11 stocks?

12 A. It's been reported, yes, sir.

13 Q. And they've properly bought them and
14 believed that they were legal, correct?

15 A. Yes, sir.

16 Q. And if they own them, they can use
17 them to increase the speed with which the AR-15
18 fires, right?

19 A. That's my belief.

20 Q. Are you familiar with a device called
21 a trigger crank?

22 A. I am familiar with some devices that
23 you crank that hook to the trigger, but I don't

1 remember them being called trigger crank. I
2 don't -- the name is not familiar to me. But
3 I'm familiar -- I think I'm familiar with what
4 you're talking about.

5 Q. Do you have a different name that you
6 use for that kind of device?

7 A. I do not.

8 Q. And do you understand how that -- and
9 is it okay if we call them trigger cranks?

10 A. Sure.

11 Q. And I think you said that they hook
12 to the trigger, correct?

13 A. Trigger guard, I believe it is, not
14 the trigger.

15 Q. They hook to the trigger guard?

16 A. I believe so.

17 Q. And is it your understanding that
18 those devices, if you turn the crank, will fire
19 more rapidly than you can fire the gun with your
20 finger alone?

21 A. From the advertisements, that's what
22 it appears to be. I've never examined one.

23 Q. Have you ever used one?

1 A. I've never seen one, no, sir.

2 Q. And is it your understanding that
3 those kinds of devices are legal in the United
4 States?

5 A. I believe so. I've not looked into
6 it. I've had no desire to own one.

7 Q. Is it your understanding that people
8 do own them in the United States?

9 A. Yes.

10 Q. And if someone owns one of those
11 devices, is it true that they can use it to fire
12 the gun more rapidly than you can with your
13 finger alone?

14 A. I would have to see the rate of fire
15 that allows you to attain to answer that
16 question.

17 Q. Well, isn't the whole point of the
18 crank to pull the trigger rapidly?

19 MR. PORTER: Object to the form of
20 the question. You can answer if you know.

21 A. You can make that assumption. But
22 you would need to ask the designer of the
23 device.

1 Q. Are you familiar with a device called
2 an AutoGlove?

3 A. No, sir.

4 Q. Does the FBI issue guns to its agents
5 that they have not been trained on?

6 A. No, sir.

7 Q. And are there any circumstances in
8 which the FBI doesn't require re-qualification
9 on the gun that agents are trained on?

10 A. Not that I'm aware of, no, sir.

11 Q. And I think you said re-qualification
12 is two or four times a year, right?

13 A. It's supposed to be.

14 Q. And if someone doesn't re-qualify on
15 some sort of regular basis, what would happen?

16 A. Unfortunately, historically nothing.

17 Q. Meaning the FBI doesn't monitor as
18 well as it should?

19 A. Correct.

20 Q. So the requirement is in place, but
21 the FBI doesn't fully monitor it?

22 A. Correct.

23 Q. Would you expect law enforcement

1 officers of any kind to get guns that they
2 aren't trained on?

3 A. No.

4 Q. What's your understanding -- strike
5 that.

6 What's your belief about the minimal
7 level of training that a law enforcement officer
8 should have to use a particular gun?

9 A. It varies from jurisdiction to
10 jurisdiction, state to state.

11 Q. I'm asking about your belief at this
12 time.

13 A. My belief? To show proficiency with
14 the firearm and an ability to maintain a level
15 of accuracy that meets the standards of the
16 jurisdiction in which you're operating.

17 Q. So when you say a level of accuracy,
18 what you mean is that they shoot the gun,
19 presumably at a range, correct?

20 A. That they qualify with the firearm.

21 Q. Qualify means take the gun to the
22 range and fire at a target and establish that
23 you're hitting the target a suitable number of

1 times?

2 A. Correct.

3 Q. And would you expect that law
4 enforcement agencies would also train on the
5 suitability of the gun for particular purposes?

6 A. It would be ideal if they would, yes.

7 Q. And would you expect that they would
8 also train on the use of the gun in connection
9 with deadly force?

10 A. Yes.

11 Q. If someone knows how to use a
12 handgun, would they also be able to equally well
13 use an AR-15?

14 A. It would depend on which handgun they
15 used.

16 Q. Are there some handguns that you
17 think are adequate for someone to have an
18 understanding of how to fire a semi-automatic
19 rifle?

20 A. Yes.

21 Q. Which one?

22 A. Some of the handguns that resemble an
23 AR-15, for example. I don't recall the model

1 numbers, but there are a number of handguns that
2 are very similar to AR-15s but they don't have
3 shoulder stocks.

4 Q. And would you say if someone knows
5 how to fire a Glock that they equally well would
6 be able to use an AR-15?

7 A. You would have to define equally
8 well.

9 Q. Would they need additional training
10 to be able to fire an AR-15 accurately?

11 A. It would depend on what other
12 training they had.

13 Q. Suppose they had only been trained on
14 the Glock in this context?

15 A. Potentially.

16 Q. You would want them to have some
17 training on the long gun as well, correct?

18 A. Ideally, you want people to have
19 training on everything. But you simply asked if
20 they could shoot it.

21 Q. There are circumstances in which
22 civilians can use weapons in a manner that's not
23 defensive, right?

1 A. Can you tell me what you're speaking
2 of?

3 Q. Civilians could use weapons in a
4 criminal context, for example, right?

5 A. They can.

6 Q. And that wouldn't necessarily be a
7 defensive use, right?

8 A. Correct.

9 Q. They could use weapons, mistakenly
10 believing that they was using them defensively
11 when that's not really the case, right?

12 A. I would assume so.

13 Q. If someone is mentally deranged, they
14 might think they're firing defensively when
15 they're not, right?

16 A. I'm not a psychologist.

17 Q. It could happen, though, right?

18 A. Of course.

19 Q. So, let's go to Exhibit Number 2. I
20 think you have it there in front of you. I'll
21 ask you to look at the paragraph above the
22 heading Self-Defense, the one that starts, for
23 purposes of this discussion. Do you see that?

1 A. Yes, sir.

2 Q. So what it says is, for purposes of
3 this discussion, rifles similar to the AR-15,
4 despite their manufacturer or model variation,
5 will be referred to as AR-15 rifles. Do you see
6 that?

7 A. Yes, sir.

8 Q. And then it says, they may also be
9 correctly referred to as modern sporting rifles;
10 is that right?

11 A. Yes, sir.

12 Q. Is it true that you would also use
13 the term "modern sporting rifles" to include
14 AK-47s?

15 A. Yes, sir. Or a variant of AK-47.

16 Q. Is it true that you would also use
17 modern sporting rifles to cover the long guns
18 that are listed in Massachusetts law 140,
19 Section 121?

20 A. Yes, sir. There's a correction on
21 the AK-47. It's semi-automatic versions of it.
22 I would not consider a fully-automatic AK-47 to
23 be a modern sporting rifle.

1 Q. And what's your understanding of
2 where the term "modern sporting rifle" comes
3 from?

4 A. I don't know where it came from.
5 It's been used in common language for quite some
6 time.

7 Q. Since when?

8 A. I don't recall.

9 Q. Since you first trained on an AR-15?

10 A. I would say probably in the last 15
11 years, but I don't know exactly when.

12 Q. So 15 years would take us back to
13 about 2000 to 2002, more or less, right?

14 A. Correct.

15 Q. If you look at the first sentence
16 under the heading Self-Defense, it says, the
17 appearance of increasing violence, especially
18 home-invasion type crimes, has many citizens
19 concerned for the safety of themselves and their
20 family. Do you see that?

21 A. Yes, sir.

22 Q. Do you consider that an expert
23 opinion or a personal opinion?

1 A. Both.

2 Q. So do you feel that you are expert on
3 concerns of citizens about their safety?

4 A. No, not in that context.

5 Q. Do you have any knowledge of how many
6 home invasions took place in the United States
7 in the last five years?

8 A. I do not.

9 Q. In the last year?

10 A. I do not.

11 Q. In that sentence you use the term
12 "many" citizens. Do you have any quantification
13 of the term "many" in that context?

14 A. I would suspect "most" might be more
15 accurate than "many".

16 Q. Do you have any quantification of the
17 term "most"?

18 A. No, sir.

19 Q. Do you have a basis for your
20 conclusion that most citizens are concerned for
21 the safety of themselves and their family in the
22 context of home-invasion type crimes?

23 A. It would be difficult for me to

1 understand how anyone would not be concerned for
2 their safety, particularly with the reports of
3 home invasions.

4 Q. Are you talking about media reports?

5 A. Yes, sir. And in my experience there
6 are not large numbers of people that have
7 security forces to protect them. Those people
8 may not be concerned.

9 Q. Are you aware of any incidents in
10 which a assault weapon that's been defined by
11 Massachusetts was used in self-defense by a
12 citizen in Massachusetts?

13 A. I am not.

14 Q. Are you aware of any incidents
15 outside Massachusetts?

16 A. I have heard of some, but I don't
17 recall where they occurred.

18 Q. So you can't give me any specifics?

19 A. No, sir.

20 Q. Go to this first paragraph under the
21 heading Wound Ballistics. It says, Americans
22 are exposed to violence, real or imagined, every
23 day. It is reasonable to say that most

1 Americans witness far more imagined than real
2 violence. What's the basis you have for that
3 statement?

4 A. My belief that people see violence on
5 television and in the movies regularly. And the
6 video games which I have seen or seen depictions
7 of, and the numbers of times that I suspect
8 people actually see real violence, which
9 thankfully, is less than you see every night on
10 TV.

11 Q. So isn't it true that people can
12 avoid video games and the kinds of movies and
13 media that you're talking about?

14 A. I believe they could.

15 Q. So do you have a basis to say that
16 most Americans witness that type of violence in
17 the media?

18 A. I know of very few people that don't
19 have televisions or don't watch TV or watch
20 movies.

21 Q. But you don't know what they watch on
22 TV, do you?

23 A. No, sir.

1 Q. Don't have any basis to know that
2 they watch movies or images, right?

3 A. Other than my opinion that that's
4 prolific in the entertainment industry.

5 Q. You don't have any basis to believe
6 that most people Americans play violent video
7 games, do you?

8 A. No, sir.

9 Q. And it goes on to say, entertainment,
10 particularly television, movies and video games,
11 is replete with fantasy examples of firearm
12 effectiveness. The fantasy can and does create
13 false expectations. When you're talking about
14 false expectations, do you mean false
15 expectations about the stopping power of
16 weapons?

17 A. Yes, sir.

18 Q. Anything else?

19 A. The effectiveness of the stopping
20 power or the ability to hit what you're shooting
21 at.

22 Q. So does all this imagined violence
23 that you're talking about in this paragraph also

1 mean that some people have false expectations of
2 how much they might need a gun to defend
3 themselves?

4 A. It could.

5 Q. Let's turn to page to page 6 of your
6 report.

7 A. (Witness complies).

8 Q. It says, as misguided as it may be,
9 many decisions regarding firearms are founded on
10 myths. Do you see that?

11 A. Yes, sir.

12 Q. Does that include what type of
13 firearm is appropriate to respond to a
14 particular situation?

15 A. I would say it's more as to caliber
16 or cartridge selection is the way I meant that.

17 Q. Does it also apply to the type of gun
18 people might select?

19 A. It could.

20 Q. If you go to the bottom of that page,
21 there's a reference to ammunition. See it, it's
22 115 grain+P+9 millimeter. Do you see that?

23 A. Yes, sir.

1 Q. Is that a particular type of bullet?

2 A. That is a cartridge.

3 Q. A cartridge. Is it a hollow-nose
4 cartridge?

5 A. That one was, yes, sir.

6 Q. So in the test that you participated
7 in, was that the only type of cartridge being
8 tested or were there other cartridges tested at
9 that same time?

10 A. I think in that particular test, it
11 was that specific cartridge that we tested.

12 Q. Were there controlled cartridges
13 being tested?

14 A. No, sir.

15 Q. Were there any reports made of the
16 results that you're talking about in this
17 paragraph?

18 A. Yes, there were.

19 Q. Are they written reports?

20 A. Yes, they are.

21 Q. Do you have copies of those reports?

22 A. I don't think so. I would have to go
23 back and see. I didn't reference them for this

1 report. That report would have been contained
2 on the CD ROM the FBI published. And I believe
3 Massachusetts has a copy of that.

4 Q. So would it be safe to say that one
5 of the reasons for this particular -- sorry. Is
6 it safe to say that one of the reasons for this
7 particular result might have been that the
8 cartridge tested was a hollow-nose cartridge?

9 A. Yes.

10 Q. Go to the next page, page 7.

11 A. (Witness complies).

12 Q. First sentence of that first
13 paragraph under Law Enforcement says, average
14 citizens require, and are entitled to, the same
15 firearms, magazines, and ammunition as law
16 enforcement inasmuch as legally discharging a
17 firearm at another human being requires the same
18 litmus test; fear of death or grievous bodily
19 harm to yourself or another. Do you see that?

20 A. Yes, sir.

21 Q. Do you consider that an expert
22 opinion or a personal opinion?

23 A. It's a personal opinion, as I'm not

1 an attorney.

2 Q. So you would consider this a legal
3 opinion?

4 A. If it's the law. If it's based on
5 law, it would be a legal opinion, yes, sir.

6 Q. And when you say it's based on law,
7 you mean that they're entitled to the same
8 firearms as law enforcement, right?

9 A. No, sir. I'm saying the deadly
10 force, the ability to apply deadly force.

11 Q. Fair enough. But isn't it also true
12 that the question of what average citizens are
13 entitled to is a legal question?

14 A. I would think it's a human question.
15 They're entitled to protect themselves just as
16 much as law enforcement officers are entitled to
17 protect themselves.

18 Q. But the point is the question of
19 entitlement is a question under the Second
20 Amendment, right?

21 A. Yes, I believe so.

22 Q. And so you're offering an opinion on
23 what the Second Amendment entitles an average

1 citizen to, right?

2 A. Yes, sir.

3 Q. Isn't it also true that law
4 enforcement officers use guns in different ways
5 than civilians from time to time?

6 A. How do you mean?

7 Q. Well, I think the examples we talked
8 about earlier serve here as well. In the
9 context, for example, of a raid on a criminal
10 hideout, wouldn't a law enforcement officer be
11 using the gun in a different way than you would
12 expect a civilian to use a gun?

13 A. I'm not sure I follow you.

14 Q. If an officer brings a gun to a raid,
15 isn't that a different use of a gun than a
16 civilian would engage in?

17 A. The presence of the firearm might be
18 used offensively. But if the firearm is
19 discharged, it's used defensively.

20 Q. Isn't that a reason for officers to
21 have a weapon that civilians might not also be
22 entitled to?

23 A. Not in my opinion, no, sir.

1 Q. Because the civilians could also go
2 on a raid from time to time?

3 A. No, sir. Because a civilian having a
4 firearm in their presence might deter an
5 individual from attacking them.

6 Q. So is there any limiting principle to
7 your opinion here? Is there anything you think
8 the law enforcement officer should have that
9 civilians shouldn't?

10 A. In terms of firearms?

11 Q. Yes.

12 A. No, sir.

13 Q. In terms of magazines?

14 A. No, sir.

15 Q. Would it be true that if the military
16 started to release military weapons to law
17 enforcement officers again, as they did for a
18 period of time about a decade ago, that
19 civilians should also have access to those
20 weapons?

21 A. What weapons are you speaking of?

22 Q. I'm talking about machine guns, for
23 example.

1 A. I don't recall the military releasing
2 machine guns to law enforcement.

3 Q. Is it the case that law enforcement
4 officers can acquire machine guns?

5 A. Yes.

6 Q. Is it your belief that civilians
7 should therefore also have access to machine
8 guns?

9 A. It's my belief it's covered in the
10 Second Amendment.

11 Q. Because the Second Amendment means
12 that civilians should have the same weaponry as
13 law enforcement officers?

14 A. I don't think the Second Amendment
15 addresses law enforcement.

16 Q. So I'm not sure I understand your
17 answer.

18 A. I don't believe the Second Amendment
19 addresses law enforcement. If I look at the
20 words in the Second Amendment, I don't see a
21 restriction on machine guns, although I have
22 recently had discussions that are making me
23 rethink that position.

1 Q. Discussions that are making you
2 rethink whether civilians should have access to
3 machine guns?

4 A. Not whether they should, whether or
5 not the law allows it.

6 Q. Does the law allow it?

7 A. I believe it does and I believe it
8 did, other than the Gun Control Act. By the
9 law, I mean the Second Amendment.

10 Q. So what you mean is that with certain
11 restrictions, there are circumstances where guns
12 can get licensed on a machine gun under Federal
13 law?

14 A. They are allowed now, yes, sir.

15 Q. In certain very limited
16 circumstances, right?

17 A. Limited by the availability, mostly.

18 Q. Isn't it also limited by access to a
19 Federal license to carry a machine gun?

20 A. No, sir.

21 Q. Is it the case that some police
22 departments have access to flamethrowers?

23 A. Not that I am aware of.

1 Q. If they did have access to
2 flamethrowers, should civilians also have access
3 to flamethrowers?

4 A. You'd have to give me a definition of
5 flamethrower because I'm not sure that civilians
6 are restricted from owning them.

7 Q. What's your understanding of what a
8 flamethrower is?

9 A. A device that projects a flame
10 forward of a nozzle.

11 Q. And it's your view that there's no
12 restrictions on civilian ownership of
13 flamethrowers?

14 A. I am aware of weed-burning devices
15 that have a nozzle that projects a flame
16 forward. And I've never looked into
17 flamethrowers, so I really don't know.

18 Q. Do some SWAT teams have access to
19 grenades?

20 A. What type of grenade?

21 Q. Tactical grenades.

22 A. What do you mean by tactical grenade?

23 Q. I mean a grenade that would be used

1 in connection with a raid, for example?

2 A. By grenade, do you mean a handheld
3 device that is thrown and makes a loud noise and
4 a flash?

5 Q. I mean a handheld explosive device
6 that is thrown and creates an explosion?

7 A. The only grenades I am aware of that
8 law enforcement uses either expel chemical
9 agents as an irritant or they make a loud flash
10 and a loud sound, but they're not designed to
11 damage anything.

12 Q. Should civilians also have access to
13 grenades that expel a chemical agent?

14 A. I don't know if they're restricted or
15 not. I've never thought about that.

16 Q. Is it your belief that if law
17 enforcement officers have them that civilians
18 should have them as well?

19 A. Sure.

20 Q. And if law enforcement officers did
21 have access to grenades that create an explosion
22 when thrown, would your opinion be that
23 civilians should also have access --

1 MR. PORTER: I object --

2 Q. -- to those grenades?

3 MR. PORTER: I object to form of the
4 question. You can answer.

5 A. By explosion, do you mean an
6 explosion like a firecracker explosion or do you
7 mean explosion to damage?

8 Q. Explosion to damage.

9 A. No.

10 Q. What's the reason that your statement
11 that average citizens are entitled to the same
12 firearms magazines and ammunition as law
13 enforcement, why doesn't that apply to grenades?

14 A. I don't consider a grenade to be a
15 firearm or ammunition or a magazine.

16 Q. Is it also because an explosive
17 grenade of the type we're talking about is
18 unreasonably dangerous?

19 A. The type of explosive grenade that
20 causes destruction is unreasonably dangerous,
21 yes. If it's just a noisemaker, it doesn't
22 cause destruction.

23 Q. Do you know, as you sit here, whether

1 all law enforcement officers agree with the
2 statement we've just been reviewing about what
3 average citizens are required and are entitled
4 to?

5 A. Do I know if they all agree?

6 Q. Uh-huh (positive response).

7 A. I would assume they don't all agree.

8 Q. Are there law enforcement officers of
9 an opinion that law enforcement should have
10 access to certain kinds of firearms, magazines
11 and ammunition that aren't available to average
12 citizens, right?

13 A. I believe there are some, yes.

14 Q. And that's because they would believe
15 that they can be effective guardians of public
16 safety, right?

17 MR. PORTER: I object to the form of
18 the question. But you can answer.

19 A. I would not know why it would be.

20 Q. Let's look at this sentence at the
21 bottom of the page. It says, therefore, the
22 appearance of the firearm may be considered
23 offensive, but intentional discharge of the

1 firearm is strictly defensive.

2 A. Okay.

3 Q. Do you see that?

4 A. Yes, sir.

5 Q. Isn't it the case that the appearance
6 of the firearm has uses to a police force that
7 are different from the appearance of a firearm
8 to civilians?

9 A. Can you clarify that?

10 Q. That they might be using the
11 existence and appearance of a firearm to
12 apprehend suspects, for example?

13 A. Citizens don't typically apprehend
14 suspects, but I know of times when it has
15 happened.

16 Q. But isn't it the case that one of the
17 uses of a firearm by a police force is to
18 apprehend suspects, and it would be very rare
19 for citizens to use a firearm for that purpose?

20 A. I don't think so.

21 Q. You don't think so, meaning that it
22 isn't rare for citizens to use firearms to
23 apprehend suspects?

1 A. I would believe citizens use them to
2 apprehend suspects far more than they shoot at
3 suspects. In other words, if you catch someone
4 breaking in your house and you have a firearm
5 and they surrender and you call the police and
6 you've not discharged a firearm but it's mere
7 appearance has caused the subject to surrender.

8 Q. So you're assuming a defensive
9 encounter in that context? Don't police go out
10 and look for suspects from time to time?

11 A. Yes, they do.

12 Q. And civilians don't do that
13 typically, right?

14 A. Correct.

15 Q. Civilians also don't typically
16 participate in raids, the type we talked about
17 earlier, right?

18 A. Not in my experience.

19 Q. Isn't it possible that -- strike
20 that. Let's go to page 8.

21 A. (Witness complies).

22 Q. I want to look at the paragraph
23 that's just above the heading Magazine Capacity.

1 It says, it could easily be argued that
2 fully-automatic rifles are appropriate for
3 defensive purposes as most federal and many
4 state and local enforcement agencies issue
5 fully-automatic rifles. And it says, the FBI
6 actually had available for general issue a
7 carbine with the ability to fire two shots with
8 one trigger press. Though these carbines were
9 being phased out, it is likely that there are
10 still examples being used by field agents. Do
11 you see that?

12 A. Yes, sir.

13 Q. When you say it could easily be
14 argued, would you say you're arguing that here?

15 A. I'd say I was making a statement.

16 Q. Is your statement an opinion that
17 fully-automatic rifles should be available to
18 civilians?

19 A. I'm not saying should be. I believe
20 the Second Amendment says they're allowable.
21 Although, as I've said, I had discussions
22 recently that -- I'm not an attorney. So I have
23 discussed with attorneys things like that.

1 Q. Is it your opinion that citizens
2 should have access to fully-automatic weapons?

3 A. It's my opinion that they do already.

4 Q. Is your statement in this paragraph
5 connected back to your belief that citizens
6 should have access to the same firearms,
7 magazines, and ammunition as law enforcement?

8 A. It's more along the lines that it is
9 just as appropriate for citizens for
10 self-defense as it is for law enforcement for
11 self-defense.

12 Q. Are you aware of any circumstances in
13 which a fully-automatic rifle was used for
14 self-defense by a civilian?

15 A. I am not. I've not studied that,
16 though. And can I add to that?

17 Q. Sure.

18 A. Many times law enforcement officers
19 have used fully-automatic rifles for self-
20 defense. But in most instances, they're not set
21 to fully automatic. So full-automatic is not a
22 necessity.

23 Q. So what you mean then is that the

1 weapon has a fully-automatic capacity, but it's
2 being used as a semi-automatic weapon?

3 A. Correct.

4 Q. And that's because the setting on the
5 weapon, the safe setting is set to semi-
6 automatic rather than to fully-automatic, right?

7 A. The fire selector is set to
8 semi-automatic. In my experience, most law
9 enforcement, even if they have the capability
10 for fully-automatic, they use the firearm set on
11 semi-automatic.

12 Q. We were talking earlier about the
13 events in Las Vegas in recent weeks. Is it your
14 understanding that the shooter in that incident
15 had large capacity magazines?

16 A. That was reported in the media.

17 Q. What size were the magazines that
18 were reported in the media?

19 A. I heard 60 and 100.

20 Q. If the shooter had not had access to
21 60 or 100-round magazines but was rather limited
22 to 10-round magazines, do you think more people
23 would have escaped?

1 A. Not necessarily.

2 Q. Why not?

3 A. Because it's my understanding that he
4 did not fire nearly as long as he had the
5 ability to fire. In other words, he stopped
6 firing at some point long before he was -- he
7 wasn't arrested, but long before they found him,
8 long before they were physically able to stop
9 him, he stopped for some other reason.

10 Q. So is it the case that when people
11 started to recognize that they were being fired
12 at in Las Vegas, they commenced running away?

13 A. I would assume so.

14 Q. And so isn't it the case that if the
15 shooter had been required to take the -- for
16 purpose of argument, take the three-second
17 interval to replace the magazines each time ten
18 rounds had fired, people might have been able to
19 run away before he stopped shooting?

20 A. It's not fair for me to try to answer
21 that because I wasn't there. But my opinion,
22 based on experiences, that there would have been
23 more than adequate time to fire more cartridges

1 than he did.

2 Q. But people would have had that
3 additional time during the magazine changes to
4 get away from where the firing was aimed, right?

5 A. I don't think there would have been
6 additional time.

7 Q. Why not?

8 A. I think he stopped long before.

9 Q. But wouldn't they have been further
10 away, I mean, in each three second interval?
11 Assuming they could make two steps or maybe
12 three steps, wouldn't they have been farther
13 away or better protected from the firing?

14 A. I wouldn't make that assumption with
15 a crowd of that size. And the distances you're
16 talking about are marginal increases, two to
17 three steps over a distance of 400 yards or
18 whatever it was, I don't know the exact
19 distance. But percentage wise, that's not much
20 gain in distance.

21 Q. But people presumably who were close
22 to the exits might have been able to get out in
23 those intervals, right?

1 A. In three seconds, maybe one or two
2 people.

3 Q. That's all the people that can fit
4 through an exit in three seconds?

5 A. I don't know.

6 MR. PORTER: Object to the form of
7 the question.

8 Q. I'm a little baffled by the
9 statement. I mean, certainly more than one or
10 two people can get out an exit in a period of
11 seconds, right?

12 A. It depends on the size of the exit.
13 But potentially.

14 Q. Thank you. Other people could have
15 gotten closer to the exits and perhaps exited
16 during the next magazine change, right?

17 A. I would assume so.

18 Q. So I would ask you to review for
19 yourself, to refresh your recollection, the
20 section that you wrote on magazine capacity. I
21 have some questions about it.

22 (Witness reviews the document)

23 A. Yes, sir.

1 Q. Is it fair to say that your opinions
2 in this section are based on choices about
3 magazine capacity made by the FBI and other law
4 enforcement officers?

5 A. Yes, sir.

6 Q. And does that mean that your opinion
7 here is based on that same belief that you
8 stated on page 7 about average citizens
9 requiring and being entitled to the same
10 firearms, magazines and ammunition as law
11 enforcement?

12 A. Yes, sir.

13 Q. And in your view, it's not relevant
14 that large capacity magazines might be misused
15 by individuals who want to kill or injure a lot
16 of people in a very short time?

17 A. What do you mean?

18 Q. Isn't it possible that there are
19 individuals who want a large capacity magazine
20 to use in a mass shooting?

21 A. It is possible.

22 Q. And do you discount the possibility
23 that the larger the magazine, the more people

1 that that individual might be able to kill?

2 A. Might be able to wound or kill.

3 Q. If you will turn to page 11.

4 A. (Witness complies).

5 Q. About three paragraphs from the
6 bottom of page 11 says, the FBI began making
7 AR-15 rifles more readily available following a
8 procurement action conducted jointly with the
9 DEA. The DEA there is the Drug Enforcement
10 Agency, right?

11 A. Yes, sir.

12 Q. And it says, the contract was awarded
13 to Rock River, Colt and Sig Sauer in
14 approximately December of 2003. All three of
15 those companies were making AR-15s to the FBI's
16 specifications, right?

17 A. I believe the Sig Sauer was
18 different. Not an AR-15 pattern, but it was
19 semi-automatic.

20 Q. So why do you include it there in a
21 discussion about AR-15 rifles being more readily
22 available?

23 A. Because the contract was awarded to

1 Sig Sauer, but we didn't purchase many of them.

2 Q. And they weren't the AR-15s in your
3 opinion?

4 A. They were more similar to a -- I
5 believe from memory, more similar to an AK-47
6 type.

7 Q. So when the FBI used both Rock River
8 and Colt to produce AR-15s, were those guns
9 essentially the same?

10 A. Yes, sir.

11 Q. And were the parts on them
12 interchangeable?

13 A. Some parts were.

14 Q. The parts we talked about earlier?

15 A. Yes, sir.

16 Q. The next paragraph begins, FBI agents
17 routinely use AR-15s -- strike that. I'm not
18 reading it correctly.

19 FBI agents routinely use AR-15 rifles
20 in arrest situations occurring in and around
21 common housing structures. When the FBI uses
22 AR-15s in and around common housing structures,
23 is it FBI policy to evacuate those structures

1 first?

2 A. No, sir.

3 Q. As best as possible?

4 A. (Witness shakes head).

5 Q. The FBI wouldn't recommend that
6 people leave the scene where they're about to
7 conduct a raid, for example?

8 A. I've rarely, if ever, known of the
9 FBI to try to evacuate an apartment or a
10 building of all the other places other than the
11 one where the raid occurred.

12 Q. What about people in and around the
13 structure, wouldn't they -- I'm sorry, not in or
14 around. People who are not inside the
15 structure, would the FBI recommend to those
16 individuals that they leave the scene before
17 using an AR-15 in that context?

18 A. No more so than using their handguns.

19 Q. They wouldn't warn people to move
20 away from the scene of a raid?

21 A. No more so than when using a handgun.

22 Q. Would they do it in the context of a
23 handgun?

1 A. If possible, if you could get people
2 away from the raid, but it's not always
3 possible.

4 Q. And would they also do it in the
5 context of a raid conducted with AR-15s?

6 A. With any firearm, yes, sir.

7 Q. Would they also try to evacuate
8 apartments next to or on the same floor as an
9 apartment before they conducted a raid using any
10 handgun or rifle?

11 A. I don't recall ever doing that, no,
12 sir.

13 Q. So people would stay in the
14 neighboring apartments even if the raid was
15 about to be conducted and they could be safely
16 evacuated?

17 A. I can't imagine the FBI choosing not
18 to evacuate them if they could safely evacuate
19 them. But I don't recall in my career ever
20 evacuating people from adjacent apartments prior
21 to conducting a spontaneous -- or a planned
22 raid.

23 Q. What's your understanding of the time

1 period in which AR-15 rifles were developed?

2 A. I believe back in the '60s.

3 Q. 1960s, right?

4 A. Yes, sir.

5 Q. They weren't available in 1900?

6 A. No, sir.

7 Q. Or before then, right?

8 A. No, sir.

9 Q. And they certainly weren't available
10 at the time the Constitution was written, right?

11 A. Correct.

12 Q. The guns at the time the Constitution
13 was written were very different, right?

14 A. Yes, sir.

15 Q. They were primarily flintlock muskets
16 and similar weapons, right?

17 A. Muzzle-loading weapons, yes, sir.

18 Q. None of them were semi-automatic,
19 right?

20 A. No, sir.

21 MR. KLEIN: Let's go off the record a
22 second.

23 (Off-the-Record discussion)

1 (Whereupon, Defendant's Exhibit 3
2 was marked for identification and
3 same is attached hereto.)

4 Q. I'm going to show you a document
5 labeled Exhibit Number 3. Would you take a look
6 at it and let me know if it's something that's
7 familiar to you.

8 A. Yes, sir, I believe I recognize this.

9 Q. Can you tell me what it is?

10 A. I believe it's a statement I made on
11 Kolbe, the Kolbe case. But I don't recall for
12 sure.

13 Q. So what you think is that it's a
14 statement that you made and was filed in the
15 record in the Kolbe case, Kolbe versus Maryland,
16 right?

17 A. I believe so, yes, sir, but I'm not
18 positive.

19 Q. Is that your signature at the bottom
20 of page 8?

21 A. Yes, sir, it is.

22 Q. And the date on there is 3/16/2014?

23 A. Yes, sir.

1 Q. Does that refresh your recollection
2 that this was, in fact, something that was
3 provided in the Kolbe case?

4 A. I believe it is, yes, sir.

5 Q. As you look through it, is there
6 anything in there that you don't believe is
7 correct or true?

8 (Witness reviews the document)

9 A. I have no reason to disagree with
10 anything I've written there, no, sir.

11 Q. You had a chance to read through the
12 whole thing?

13 A. Yes, sir.

14 Q. And so your opinions on any of the
15 issues that you cover in this declaration are
16 still the same as they were at that time, right?

17 A. Yes, sir.

18 Q. I'd like to go to page 5. Strike
19 that. Paragraph 5. Let's go by paragraphs at
20 this point. It's easier. So it says at the top
21 of that paragraph, it is notable that the
22 Defendants make use of high-ranking police
23 officers for many of their arguments. It has

1 been my experience that law enforcement
2 executives typically have very little
3 understanding of wound ballistics and
4 appropriate firearms for law enforcement
5 purposes. Do you see that?

6 A. Yes, sir.

7 Q. Is that still your opinion?

8 A. Yes, sir.

9 Q. And what's the basis for that
10 opinion?

11 A. I conducted numerous live fire
12 demonstrations for FBI National Academy classes.
13 The National Academy is composed of high-ranking
14 police officers, administrative personnel. And
15 in all of those demonstrations, the majority of
16 them seem to be surprised by what we showed them
17 were facts regarding firearms and ammunition,
18 the capabilities and the realities of how they
19 interacted with intermediate barriers.

20 Q. Would it be fair to infer that
21 civilians have the same lack of understanding of
22 wound ballistics and appropriate firearms for
23 the choices that they make?

1 A. Probably.

2 Q. Turn to paragraph 7.

3 A. (Witness complies).

4 Q. The middle of that paragraph says,
5 while it is accurate to say that law enforcement
6 uses firearms with magazines capable of holding
7 more than ten rounds in most arrests, it is
8 misleading to indicate that the actual magazine
9 capacity had anything to do with the success of
10 most of those arrests; similarly, the number of
11 incidents wherein a single officer has been
12 required to fire more than ten rounds is small.
13 Do you see that?

14 A. Yes, sir.

15 Q. Would you expect the same to apply to
16 civilian defensive uses of large capacity
17 magazines?

18 A. Yes, sir.

19 Q. Go to paragraph 13. You say in
20 paragraph 13, the vast majority of law
21 enforcement actions end with no shots fired. If
22 a situation ends with no shots fired, it cannot
23 be argued that a magazine capacity of greater

1 than ten rounds is necessary. Similarly, when
2 the shots are fired, the number fired by
3 individual officers is typically less than ten;
4 therefore, there is little or no necessity for
5 law enforcement officers to have firearms with
6 magazine capacity greater than ten rounds. Is
7 that your opinion?

8 A. Yes.

9 Q. It's still your opinion?

10 A. Yes, sir.

11 Q. Let's go back a little bit to
12 paragraph 11. It says at the beginning of that
13 paragraph, Defendants' statements claiming the
14 banned rifles to be dangerous and unusual are
15 crafted to elicit emotional responses. All
16 firearms are dangerous. Is that opinion still
17 your opinion?

18 A. Yes.

19 Q. And would it also apply to the
20 Massachusetts case?

21 A. Apply to all cases.

22 Q. So your statement, all firearms are
23 dangerous is very absolute. Isn't it the case

1 that some firearms are more dangerous than
2 others?

3 A. In what manner?

4 Q. Dangerous to other humans.

5 A. It's the projectile that's propelled,
6 not the firearm that's dangerous.

7 Q. Doesn't the number of shots that can
8 be fired in a short period of time increase the
9 danger of a firearm to other humans?

10 A. The number of projectiles that can be
11 discharged in a short period of time increases
12 the danger.

13 Q. And when you say projectiles, you
14 typically mean bullets, right?

15 A. Yes, sir, the actual item that is
16 propelled through the air.

17 Q. Which is typically a bullet in most
18 contexts?

19 A. Or a round shot, like a buckshot.

20 Q. Fair enough. Thank you.

21 MR. KLEIN: Let's take a break.

22 (Brief recess was taken from
23 11:18 a.m. to 11:29 a.m.)

1 (Whereupon, Defendant's Exhibit 4
2 was marked for identification and
3 same is attached hereto.)

4 Q. I'm going to show you a document
5 that's labeled Exhibit Number 4. And I'm going
6 to represent to you before you review it that
7 this is a copy of the transcript of a deposition
8 that was taken in the case Kolbe versus
9 O'Malley, which we've been discussing from time
10 to time over the course of the morning. And my
11 understanding is this is a deposition taken of
12 you, and the date was January 3rd, 2014. Do you
13 remember having that deposition taken?

14 A. Yes, sir.

15 Q. Did you have an opportunity to review
16 the transcript after the deposition?

17 A. I did.

18 Q. Do you have any reason to believe
19 that on that date, you were not giving truthful
20 and responsive answers to the questions being
21 asked of you to the best of your ability?

22 A. No, sir.

23 Q. Meaning that you were under oath and

1 you were doing your best to answer truthfully?

2 A. Yes, sir.

3 Q. At the time that this deposition was
4 taken, you were represented by one of the
5 lawyers from the Bradley firm, right?

6 A. Yes, sir.

7 Q. That was John Parker Sweeney,
8 correct?

9 A. Yes, sir.

10 Q. Do you remember that he was there and
11 present with you?

12 A. Yes, sir, I do.

13 Q. Do you remember that the Bradley firm
14 represented the Plaintiffs in the Kolbe case?

15 A. Yes, sir.

16 Q. And in connection with that
17 deposition, you issued a report that was
18 discussed over the course of the deposition,
19 right?

20 A. Yes, sir.

21 Q. And I think you've already testified
22 that that report, but for additional material,
23 was very similar to the one you provided for the

1 Massachusetts case, right?

2 A. Yes, sir.

3 Q. And you had an opportunity to work
4 with a lawyer at the Bradley firm to prepare
5 yourself for that deposition, correct?

6 A. Yes, sir.

7 Q. And that would have been Mr. Sweeney,
8 right?

9 A. Yes, sir.

10 Q. So I'd like you to turn to page 95 of
11 this deposition. And if you could, starting on
12 line 8 of page 95, could you read the questions
13 and answers all the way through page 101, line
14 9?

15 MR. PORTER: Read or read out loud?

16 MR. KLEIN: No, I just want him to
17 read to himself.

18 A. What was the number?

19 Q. You're welcome to put a line on here
20 so you know where I want you to start and stop.
21 Starting on page 95 at line 8 and going through
22 page 101, line 9. If you would read that
23 material, I would appreciate it.

1 (Witness reviews the document)

2 Q. So if I asked you these same
3 questions as we sit here today, would you give
4 me the same answers?

5 A. If they were asked exactly the same
6 way, yes, sir.

7 Q. Would you turn to page 132?

8 A. (Witness complies).

9 Q. If you start with the question on
10 line 11 of page 132 and read to the next page,
11 133, line 8.

12 (Witness reviews the document)

13 A. Okay.

14 Q. And if I asked you these same
15 questions in the same words, would you answer
16 the same way?

17 A. No, sir.

18 Q. What would you change in your
19 answers?

20 A. The last question, have you ever
21 heard of them functioning differently, the
22 10-round magazines as opposed to the 15, my
23 answer was no. Since then, I have been told by

1 a friend that some reduced-capacity magazines
2 did not function appropriately in the Glock
3 pistols.

4 Q. Meaning that they didn't work right?

5 A. The pistols malfunctioned.

6 Q. Because the magazine was defective,
7 as far as you know?

8 A. I was just told the magazine was the
9 only change and the pistol malfunctioned, so I
10 assumed it was because of the magazine, yes,
11 sir.

12 Q. So they could have been faulty
13 magazines in that context?

14 A. It was assumed that since the
15 magazine was the only variable that changed,
16 that the magazine itself was the cause. Whether
17 it was a faulty magazine -- whether it was by
18 design or an individual piece.

19 Q. Is it fair to say you've also heard
20 of 10-round magazines functioning correctly in
21 the Glock pistol?

22 A. Yes.

23 Q. Go to page 162.

1 A. (Witness complies).

2 Q. If you would start at the top of that
3 page with line 1 and read through page 163, line
4 10, I have some questions about that.

5 (Witness reviews the document)

6 A. Okay.

7 Q. If I ask you these same questions,
8 would you answer the same way?

9 A. For the most part. There is what I
10 believe to be a typo or I misspoke on line
11 number 8. I said 9-millimeter and a .223 would
12 be, I believe, 200 rounds. That should be 200
13 yards.

14 Q. Correct. I made a note of that as
15 well. I agree, that should be 200 yards.
16 Otherwise, your answers are, to the best of your
17 knowledge, the same now as they were then?

18 A. Yes, sir.

19 Q. You state here that civilians are
20 probably more likely than law enforcement
21 officers to miss their shots. Is that right?

22 A. Yes, sir.

23 Q. Would that be even more true if the

1 civilian was untrained on the gun that they were
2 firing?

3 A. That's the basis for the opinion is
4 that they are more likely not as well trained as
5 the law enforcement officer.

6 Q. And is it also true that there are no
7 qualification requirements for civilians such
8 that they probably spend less time qualifying on
9 the rifle in most instances?

10 A. It would depend on the jurisdiction.
11 I believe for pistol permits, some jurisdictions
12 require a qualification. But I'm not sure.

13 Q. Require a qualification, but not a
14 regular re-qualification like a law enforcement
15 agency as we've discussed?

16 A. Probably not. I would have to look
17 at the individual jurisdiction. It would not be
18 unusual for them to be required to qualified
19 less than the law enforcement officer is.

20 Q. And is it your opinion that civilians
21 are less likely to have experience with the
22 firearm that allows them to hit what they're
23 aiming at?

1 A. If looked at a large group, yes, sir.
2 Some civilians would have more experience. But
3 overall a large group, yes, sir.

4 Q. When you say overall, you mean an
5 average; is that a fair way to say it?

6 A. Taken as the sum of the whole
7 civilian population, yes, sir.

8 Q. Let's go back to page 59. If you
9 would start on line 6 and read through the next
10 page, 60, line 5, I have some questions.

11 (Witness reviews the document)

12 A. May I read further back for context?

13 Q. Sure, whatever you would like to read
14 is fine for you to read.

15 (Witness reviews the document)

16 A. Okay.

17 Q. So we talked earlier very briefly
18 about AR-15s being chambered for slightly
19 different ammunition, right?

20 A. (Witness nods head).

21 Q. And what we were talking about then
22 is covered in this testimony, right, that there
23 are different kinds of ammunition that can be

1 used in AR-15s provided they're properly
2 chambered, right?

3 A. Yes, sir. But there are also
4 cartridges chambered for an AR-15 that would not
5 be expected to penetrate soft body armor.

6 Q. Okay. The cartridges we're talking
7 about here, the .223 Remington, the 5.56 NATO
8 and the 7.62 NATO, those are all cartridges that
9 can be fired from an AR-15 provided the gun is
10 properly chambered for it?

11 A. No, sir.

12 Q. Why not?

13 A. 7.62 NATO would be an AR-10. It's a
14 larger rifle.

15 Q. Right. And 7.62x39 millimeter is
16 what most AK-47s are chambered for?

17 A. Yes, sir.

18 Q. And all of those rounds can penetrate
19 soft body armor, right?

20 A. Should be expected to, yes, sir.

21 Q. So if you wanted to use body armor
22 for these rounds, you would put a plate in it?

23 A. Yes, sir.

1 Q. And it would be some sort of a metal
2 plate designed for the purpose, right?

3 A. A plate designed for the purpose, not
4 necessarily metal.

5 Q. And there is -- what other substances
6 could be used besides metal?

7 A. Ceramic.

8 Q. And there is body armor that's
9 designed to accommodate the plate that would
10 stop penetration of these rounds, right?

11 A. That should.

12 Q. Meaning you could slide the plate in?

13 A. That should, yes, sir.

14 Q. Not every example of soft body armor
15 has the proper pocket for it, but most of them
16 do, right?

17 A. Well, by these rounds, you're lacking
18 specificity by quoting a cartridge -- a
19 chambering as opposed to an actual cartridge
20 loading. For example, there are certain
21 projectiles that can be loaded in these
22 cartridges which have a greater propensity to
23 penetrate than others.

1 Q. And in order to stop penetration of
2 those rounds, you would put in a metal or a
3 ceramic plate and you would incorporate that
4 into your body armor, right?

5 A. We would incorporate a plate that was
6 tested to stop them. We did not really specify
7 the material it was made of.

8 Q. Turn to page 118, please. If you
9 could read from page 118, line 17 through 120,
10 line 4, I have some questions. And feel free to
11 read anything else you think would amplify your
12 understanding of what you're reading.

13 MR. PORTER: What was the terminal
14 page and line?

15 MR. KLEIN: 120, line 4.

16 A. Okay.

17 Q. If I ask you these same questions
18 today, would you answer the same way?

19 A. Can I ask to go off the record?

20 Q. I'd prefer you answer the question
21 first and then we can go off the record. Unless
22 you have a question that --

23 A. For the most part.

1 Q. When you say for the most part, is
2 there an answer that you would change?

3 A. There might be a classified cartridge
4 I'm aware of that might violate some of what
5 I've specified there.

6 Q. Is that the cartridge that you
7 describe at the top of page 119?

8 A. Yes, sir.

9 Q. And when you say it's classified,
10 does that mean it's in development and there's
11 no public knowledge of its development?

12 A. There should be no public knowledge
13 of it.

14 Q. I won't ask you any additional
15 questions about it then.

16 A. Thank you.

17 Q. If you will turn to page 170.

18 A. Okay.

19 Q. Can you read from the beginning of --
20 well, I'm sorry. From line 3 of page 170
21 through line 22 of 172.

22 (Witness reviews the document)

23 A. Okay.

1 Q. So is it fair to say that your answer
2 in page 172, line 18 should say steal rather
3 than style?

4 A. Yes, sir.

5 Q. That's just a typo, right?

6 A. Yes, sir.

7 Q. If I ask you these questions, would
8 you answer the same way but for correcting that
9 typo?

10 A. I believe so.

11 (Whereupon, Defendant's Exhibit 5
12 was marked for identification and
13 same is attached hereto.)

14 Q. I'm going to show you an exhibit
15 that's labeled Exhibit Number 5. Have you seen
16 this document before?

17 A. Probably, but I don't recall.

18 Q. I'm not going to ask you a lot of
19 detailed questions about it. I want to look at
20 a chart with you and see if it's consistent with
21 your understanding of the questions the Army
22 offers opinions on.

23 MR. PORTER: Can we go off the record

1 real quick for a second?

2 MR. KLEIN: Sure.

3 (Off-the-Record discussion)

4 Q. On page 7-8 of this document. It's a
5 section that begins, Rapid Semi-Automatic Fire.
6 Can you read to the place on 7-9 that says,
7 Modifications for Rapid Semi-Automatic Fire?

8 ((Witness reviews the document))

9 A. Okay.

10 Q. Do you have any reason to believe
11 that this is not an accurate description of how
12 the Army trains soldiers about use of guns that
13 can fire either automatically or semi-
14 automatically?

15 A. I do not.

16 Q. Are you aware that this is the Army's
17 policy about use of weapons that can fire either
18 semi-automatically or automatically?

19 A. I'm not aware prior to reading this.

20 Q. Do you have any reason to disagree
21 with anything that the Army says here?

22 A. I have no basis to agree or disagree.

23 Q. Okay. Are you aware that soldiers

1 are discouraged from using automatic fire except
2 for suppression and are normally encouraged to
3 use semi-automatic fire because it's more
4 accurate?

5 A. I was not in the military, nor did I
6 participate in that type of training. But it's
7 what the manual appears to say that you've shown
8 me.

9 (Whereupon, Defendant's Exhibit 6
10 was marked for identification and
11 same is attached hereto.)

12 Q. I've given you an exhibit that's been
13 labeled Exhibit Number 6. Is this document
14 familiar to you?

15 A. I don't recall the cover sheet. But
16 I believe I have seen the document behind it.

17 Q. Did you have any involvement in
18 preparing the document?

19 A. I do not believe that I did.

20 Q. Is it possible that any of your
21 testing results were incorporated in the
22 document by you?

23 A. I would need to read the whole

1 document to know.

2 Q. Okay, fair enough. In particular, I
3 would like you to turn to page 37.

4 A. Yes, sir.

5 Q. Is Exhibit 7 test results that you
6 generated?

7 A. I do not believe so, no, sir.

8 Q. So you have a good deal of background
9 in the question of ballistics associated with
10 testing body armor; is that fair to say?

11 A. Yes, sir.

12 Q. You did a fair amount of testing of
13 body armor from time to time for the FBI?

14 A. Yes, sir.

15 Q. Can you explain how the different
16 classifications of body armor work?

17 A. The NIJ established threat levels
18 based on a belief of the ability of different
19 projectiles at different projective velocities
20 to penetrate soft body armor.

21 Q. And so they establish standards for
22 what type of body armor is necessary to protect
23 against projectiles of different types, right?

1 A. They establish standards with that
2 end goal. That was their goal, yes, sir.

3 Q. So if you go to page 34 and 35 of
4 this document, do those accurately reflect the
5 standards as far as you know?

6 A. The NIJ standards, yes, sir.

7 Q. And are those standards that you
8 agree with for the most part?

9 A. As a starting point, yes, sir.

10 Q. So if you look at the standard for
11 Type III-A body armor, can you read that?

12 A. High velocity -- oh, out loud or --

13 Q. You can read it to yourself. It's
14 fairly technical.

15 (Witness reviews the document)

16 A. I read it.

17 Q. Is that your understanding of what
18 Type III-A body armor does?

19 A. For the most part, yes, sir.

20 Q. Can you read the next paragraph about
21 Type III body armor?

22 A. Yes, sir.

23 (Witness reviews the document)

1 Q. Is that your understanding of the
2 standard for Type III body armor?

3 A. It is.

4 Q. Is it fair to say that Type III body
5 armor prevents penetration of some projectiles
6 that Type III-A does not?

7 A. Yes.

8 Q. And what type of projectiles are
9 those, the ones listed here?

10 A. Yes, sir.

11 Q. And that means it's essentially more
12 protective body armor than Type III-A, right?

13 A. Yes, sir.

14 Q. And more protective than I think
15 anything in the Type I or Type II class, right?

16 A. Correct.

17 Q. And Type III-A body armor -- I'm
18 sorry. Strike that.

19 Type III body armor is the type of
20 body armor that would typically be recommended
21 for an agent that's facing the threat of an
22 AR-15 type weapon, right?

23 A. No, sir, I don't believe we had Type

1 III.

2 Q. Type III would protect against the
3 range of threats typically offered by an AR-15
4 type weapon, correct?

5 A. Typically, yes, sir.

6 Q. And Type III-A would not?

7 A. Correct.

8 MR. KLEIN: All right. At this point
9 I'd like to take a lunch break. We're almost
10 done, but I don't want to represent how quickly
11 I can finish when I get back, only because I
12 haven't gone through these documents.

13 MR. PORTER: Sure.

14 MR. KLEIN: It's noon. Take an hour
15 and a quarter just because I want to be sure I
16 have a fair chance to read through this.

17 MR. PORTER: Absolutely.

18 MR. KLEIN: And I don't think we're
19 going to be that long in the afternoon. I think
20 we'll be done in time for you to get out of
21 Birmingham without too much traffic.

22 (Lunch recess was taken from
23 12:04 p.m. to 1:17 p.m.)

1 (Whereupon, Defendant's Exhibit 7
2 was marked for identification and
3 same is attached hereto.)

4 Q. Let me show you Exhibit Number 7,
5 which is a document that I downloaded from the
6 internet which seems to quote you. Do you
7 recognize the quote at the bottom of the page?

8 A. Absolutely.

9 Q. Is that something you've said?

10 A. Yes, it is.

11 Q. Do you want to read it out loud just
12 so we can talk about it, please?

13 A. This is not a discussion about shot
14 placement. Its importance has been evident
15 since men started to fling rocks at other men.
16 This is a discussion about improving the rock.

17 Q. So was this discussion a discussion
18 you were present at?

19 A. Where I made the quote?

20 Q. Well, I'm not asking about the quote
21 just yet. I'm just asking about this appears to
22 be related to a wound ballistics testing panel.

23 MR. PORTER: There's another side.

1 Q. Yeah, I'm sorry. It's a two-sided
2 document. If you look at the other side, this
3 might help you remember what this is from.

4 A. I was present when they had this
5 panel. I don't believe I was a participant in
6 the panel.

7 Q. And do you know where they took this
8 quote from?

9 A. I've made that statement many times
10 during the course of my career when I was -- my
11 counsel was sought on wound ballistics and
12 projectile selection.

13 Q. So there's a number of people whose
14 faces who are whited out of the picture here.

15 A. Yes.

16 Q. Is there a reason why their pictures
17 are not available?

18 A. I didn't white their faces out. But
19 I suspect that whoever put the picture did not
20 want those individuals identified.

21 Q. Uh-huh (positive response). And what
22 kind of gun do you see in the picture there?

23 A. That -- because I was there when the

1 picture was taken, I know that to be a 6.8 SPC
2 Carbine. And I believe it was a PRI, if I
3 remember correctly. But I'm not positive on it
4 being a PRI.

5 Q. And did you take the picture?

6 A. No, sir, I did not.

7 Q. But you were present when they were
8 taking it?

9 A. Yes, sir.

10 Q. And so I want to ask you just briefly
11 about what you meant by the statement that's at
12 the bottom of the page. What does it mean to
13 improve the rock?

14 A. If not for the bullet, no one would
15 be afraid of the gun. And therefore, I was
16 telling them that we need to improve the
17 projectile to get performance.

18 Q. Improve in what way?

19 A. Improve it for its terminal
20 effectiveness to meet the goals that you want it
21 to meet. And it was also made in regards to
22 quite frequently when discussing appropriate
23 cartridges, persons wanting to bring up

1 training. And people will say we improve our
2 effectiveness by improving our training,
3 therefore, our shot placement gets better. And
4 that statement was made to remind people that
5 we're not here to talk about training, we're
6 here to talk about improving projectile terminal
7 performance.

8 Q. And when you say terminal
9 performance, do you generally mean stopping
10 power?

11 A. That's not a term that I use.

12 Q. What do you mean by terminal
13 performance then?

14 A. Effectively damaging tissue to
15 physiologically make an aggressive subject cease
16 the actions he was committing which caused you
17 to shoot him in the first place.

18 Q. So the concept there is if you hit
19 somebody, you want to stop that person?

20 A. If you shoot anybody, you're trying
21 to stop them from doing something. But we stop
22 shooting when they stop doing what they're
23 doing, whether we've shot them or not.

1 Q. Assuming we can further improve the
2 rock, as you state here, that improvement would
3 typically be available not just to law
4 enforcement but also to civilians and to
5 criminals, right?

6 A. Yes.

7 Q. All right. One more.

8 (Whereupon, Defendant's Exhibit 8
9 was marked for identification and
10 same is attached hereto.)

11 Q. I wanted to show you a document
12 that's been labeled Exhibit Number 8. I'll
13 represent to you that I took this off the
14 internet. It's from a site called
15 wethearmed.com. Do you see that at the top?

16 A. Yes, sir.

17 Q. And it's from a thread called What is
18 Wrong with the FBI. It appears to be that We
19 The Armed is a message board; is that right?

20 A. I don't recall wethearmed.com.

21 Q. It's not a message board you
22 participate in?

23 A. It's not one that I recall

1 participating in. I may have participated at
2 one time, but I don't -- I don't recall doing
3 so. I can't say I haven't, but I don't recall
4 doing it.

5 Q. That's fine. If you would turn --
6 the pages are labeled in the bottom right. If
7 you would turn to the page that's labeled 4-14.

8 A. Okay.

9 Q. And there's something that appears to
10 be a quote from you in the post by someone
11 called coyotesfan97. It says from SSA Buford
12 Boone, recently retired supervisor of the FBI
13 BRF. Do you see that?

14 A. Yes, sir.

15 Q. Could you read the quoted material
16 and tell me if it's an accurate quote?

17 (Witness reviews the document)

18 A. I believe it to be. It looks like
19 something that I remember writing.

20 Q. Is it something you wrote and
21 probably posted somewhere else?

22 A. Yes, sir.

23 Q. And the fellow who posted it here

1 picked it up and put it in the thread?

2 A. Yes, sir.

3 Q. But he accurately picked up what you
4 wrote on another forum of some kind?

5 A. It appears so. Without having the
6 other one to quote, it appears that he did.

7 Q. Do you remember where you posted
8 this?

9 A. Probably on lightfighter.net.

10 Q. What is lightfighter.net?

11 A. An internet forum.

12 Q. What kind of an internet forum is it?
13 What's the general subject matter that you
14 addressed in lightfighter.net?

15 A. Military law enforcement.

16 Q. Military and law enforcement?

17 A. Yes, sir.

18 Q. And is that some place you post
19 regularly?

20 A. Not regularly. But I'm easy to find
21 because I post in my real name.

22 Q. So do you remember the general
23 context of the discussion in which you posted

1 this statement?

2 A. Yes, sir.

3 Q. Can you tell me?

4 A. The FBI was switching to
5 9-millimeter, and I knew that was going to be
6 viewed with a jaundiced eye by many in the
7 firearms community. And I wanted to ensure that
8 people knew that my replacement had my full
9 support, that it was something I had tried to do
10 in the past but I was unable to do it.

11 Q. And what you're talking about there
12 is switching from .40 caliber to 9-millimeter
13 caliber ammunition, right?

14 A. Yes, sir. The FBI was using .40
15 caliber ammunition during my tenure. And
16 because of the recoil associated with it, we
17 were forced to lower the velocity which then
18 also changed the terminal performance. And I
19 lobbied hard and lost, that if we're going to
20 modify the .40 to be less effective than the 9,
21 we should just issue the 9-millimeter because
22 it's disingenuous of us to give the impression
23 that we're giving a better firearm when, in

1 fact, all we're doing is giving less cartridges
2 available for defense of yourself.

3 Q. At the bottom of the page what you
4 wrote is, so far as the more powerful cartridges
5 go, my personal opinion is that nobody should
6 even be allowed to carry them unless they're
7 able to consistently max out on the
8 qualification course. Do you see that?

9 A. Yes, sir.

10 Q. And then it says, I'd far rather go
11 to work with a 98 to 100 percent agent carrying
12 a 9 than an 80 percent agent caring a .40 to
13 .45. In that sentence, does 98 to 100 percent
14 mean the qualification score?

15 A. Yes, sir.

16 Q. And the 80 percent means a lower
17 qualification score?

18 A. Yes, sir.

19 Q. So you would prefer to be with an
20 agent who had a higher score with a 9-millimeter
21 caliber bullet than someone with a lower score
22 with a .40 caliber or a higher powered full
23 round, right?

1 A. Yes, sir. The premise is you can't
2 miss fast enough to stop someone. Anything you
3 can do to increase your ability to place the
4 shot on target.

5 Q. So in general, does this reflect of
6 you that people should be required to qualify
7 with guns or ammunition prior to being able to
8 carry it and use it?

9 MR. PORTER: Object to the form of
10 the question.

11 A. This was specifically with regards to
12 law enforcement officers.

13 Q. So does a different principal apply
14 to civilians?

15 A. In a perfect world, I would prefer
16 everybody could shoot. But I was only applying
17 that to law enforcement officers.

18 Q. In the statement?

19 A. Yes, sir.

20 Q. And it's not a perfect world, right?

21 A. Far from it.

22 MR. KLEIN: I have no further
23 questions.

1 MR. PORTER: We have no questions.

2 (Off-the-Record discussion)

3 MR. PORTER: Counsel for the
4 Plaintiffs designates the following information
5 is confidential pursuant to the protective order
6 entered in this case: Mr. Boone's personal
7 identifying information, which would include his
8 home address; any discussion of Mr. Boone's
9 personal ownership of firearms; any discussion
10 of Mr. Boone's personal carry of firearms; and
11 any discussion of his personal firearms, that
12 would include any storage or keeping of his
13 firearms whether stored or not stored. Buford,
14 is that satisfactory to you?

15 THE WITNESS: Yes.

16 MR. KLEIN: Agreeable. Thank you.

17 (Deposition concluded at 1:31 p.m.)
18
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CERTIFICATE

STATE OF ALABAMA)

AT LARGE)

I hereby certify that the above and foregoing deposition was taken down by me in stenotype and the questions and answers thereto were transcribed by means of computer-aided transcription and that the foregoing represents a true and correct transcript of the testimony given by said witness upon said deposition.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

/s/ KATHY HART CANADAY, CCR, RPR

Certified 10/26/2017

Commissioner at Large

ACCR 586, Expires 9/30/2018

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2/20/2018

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I, J. BUFORD BOONE, III, hereby
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As you read your deposition, if you have any corrections to make, please itemize them below. Upon completion, please sign on this errata sheet so that I can return it to the proper court. However, if you do not have any corrections to make, sign this form and return it to me within 30 days. Thank you.

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DANIEL COURT REPORTING, INC.

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SIGNATURE

I, J. BUFORD BOONE, III, hereby
certify that I have read the transcript of my
deposition, and except for the corrections
listed below, certify that it is a true and
correct transcription.



J. BUFORD BOONE, III

DANIEL COURT REPORTING, INC.

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1 As you read your deposition, if you have any
 2 corrections to make, please itemize them below.
 3 Upon completion, please sign on this errata
 4 sheet so that I can return it to the proper
 5 court. However, if you do not have any
 6 corrections to make, sign this form and return
 7 it to me within 30 days. Thank you.

CHANGES MADE BY THE WITNESS:

| PAGE | LINE | FROM | TO |
|------|------|---|---------------|
| 31 | 18 | K-O-C-H-Z-E-K | K-O-Z-A-C-E-K |
| 36 | 23 | sites | sights |
| 121 | 18 | qualified | qualify |
| 130 | 19 | Don't think I said "projective" sentence is cogent without it | |

DEPONENT



DATE 11/15/2017

EXHIBIT 14
TO KAPLAN DECLARATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID SETH WORMAN, et al.

Plaintiffs

Case No.

vs.

1:17-cv-10107-WYG

CHARLES D. BAKER, et al.

Defendants

_____/

The deposition of GUY ROSSI was held on
Monday, November 6, 2017, commencing at 9:05 a.m., at
Bradley Arant Boult Cummings, LLP, 1615 L Street, N.W.,
Suite 1350, Washington, D.C. 20036, before Melinda
Johnson, CSR, Notary Public.

REPORTED BY: Melinda Johnson, CSR

Page 2

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2

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20

21

Page 3

1 INDEX

2 Deposition of GUY ROSSI

3 November 6, 2017

4

| 5 Examination By: | Page |
|--|--------|
| 6 Mr. Sweeney | 4 |
| 7 | |
| 8 | |
| 9 Exhibit No: | Marked |
| 10 Exhibit 1 Subpoena and Notice of Deposition | 6 |
| 11 Exhibit 2 Expert Witness Report and CV | 10 |
| 12 Exhibit 3 Testimony List | 17 |
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| 15 Exhibit 6 Excerpt of Transcript | 159 |
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| 19 Exhibit 10 Excerpt of Transcript | 163 |
| 20 Exhibit 11 Excerpt of Transcript | 164 |
| 21 (Exhibits attached to transcript.) | |

Page 4

1 PROCEEDINGS

2 Whereupon,

3 GUY ROSSI

4 called as a witness, having been first duly sworn to

5 tell the truth, the whole truth, and nothing but the

6 truth, was examined and testified as follows:

7 EXAMINATION BY MR. JAMES SWEENEY:

8 Q. Good morning. My name is Jim Sweeney. I'm

9 with the Massachusetts Attorney General's Office State

10 Trial Counsel; and in this case we represent the

11 defendants Attorney General Maura Healey and others.

12 And I'll ask you to identify yourself for

13 the record.

14 A. Yes. My name is Guy Rossi.

15 Q. And will you give us your home and business

16 address.

17 A. Redacted Personal Information

18

19

20 Rochester, New York.

20 Q. And do you have a business address as well?

21 A. It's the same.

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1 Q. The same. Okay.

2 Now, I take it you've been deposed before?

3 A. Yes.

4 Q. So I'm just going to go over a few of the

5 ground rules for the deposition just to make sure that

6 we're clear.

7 If any of my questions are unclear, please

8 ask me to clarify them. They can easily get

9 convoluted, so please just ask me. If you don't seek

10 clarification and you answer the question, I'll assume

11 that you understood the question.

12 Please wait for me to finish asking the

13 question before you start to answer so that our

14 stenographer, Melinda, can take it down; and please

15 answer orally as she cannot take down nods of the head

16 and other nonverbal gestures.

17 If you need a break at any time, just let

18 me know. We can always break as long as there is no

19 question pending.

20 And please understand that as you just --

21 that you're under oath. You're obligated to answer

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1 case, and is that case related to the federal court
 2 case?
 3 A. It's the second -- it's one in the same
 4 case. Part of it was criminal, and part of it was
 5 civil.
 6 Q. Okay. And you testified for the County of
 7 Monroe in that case.
 8 Do you recall what your testimony was?
 9 A. Yes. It was that the officer's actions
 10 were within the policies of the Monroe County Sheriff's
 11 Department within the confines and the guidance of
 12 New York State Article Penal Law 35, which is
 13 justification of use of force, and that their actions
 14 were not unreasonable.
 15 Q. And there was no firearm --
 16 A. No firearm in that case --
 17 Q. -- used in that case, correct?
 18 A. -- no.
 19 Q. Do you recall whether you gave depositions
 20 in any of the cases that we've talked about so far?
 21 A. Whether I gave --

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1 Q. Depositions.
 2 A. -- depositions? I gave depositions --
 3 honestly, I can't say for certain off the top of my
 4 head.
 5 Q. Have you ever given expert testimony in a
 6 case in which your opinion has been that either an
 7 officer or an individual party has used more force than
 8 necessary in the circumstances?
 9 A. No. I don't think so.
 10 Q. Let's turn to the last category on
 11 Exhibit 3, Recent Depositions.
 12 A. Yes.
 13 Q. First one is a New York State Rifle and
 14 Pistol Association versus Andrew Cuomo.
 15 What was your -- what was the -- strike
 16 that.
 17 Can you tell me the -- what that case was
 18 about.
 19 A. That case was similar in nature to the case
 20 that we're presently on. It was an -- it's a case that
 21 restricted certain firearms, possession by law-abiding

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1 citizens, magazine capacities, issues with certain
 2 weapons being considered illegal. Basically, that was
 3 about it.
 4 Q. And you were an expert in that case?
 5 A. Yes.
 6 Q. Did you do an expert report?
 7 A. I did.
 8 Q. And what were your -- in general, what were
 9 your opinions in that case?
 10 A. My opinions were that the State of New York
 11 basically arbitrarily decided that certain firearms
 12 were to be banned and that it restricted the ability of
 13 law-abiding citizens to be able to protect themselves
 14 in their homes. That was about it.
 15 Q. Were your opinions in that case similar to
 16 those in the report in this case, the Worman case?
 17 A. Yes.
 18 Q. Check the next one. Shew versus Malloy in
 19 Connecticut.
 20 Can you just tell me the circumstances of
 21 that case.

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1 A. They're fairly similar. With the exception
 2 of Huellett that you see here, all of them are fairly
 3 similar cases.
 4 Q. So let's -- so Shew, Kolbe, and Flanagan
 5 are all similar?
 6 A. Yes.
 7 Q. And you did both the report and had a
 8 deposition taken in each one of those?
 9 A. Yes, I believe so.
 10 Q. And they each involved challenges or
 11 restrictions on use of certain firearms and magazines?
 12 A. That's correct.
 13 Q. And, in general, what was your opinion in
 14 each of those cases? Was your opinion substantially
 15 the same in each of those cases?
 16 A. It was, yes.
 17 Q. Okay. And that was what?
 18 A. Yes.
 19 Q. Same as in the New York State Rifle
 20 Association versus Cuomo?
 21 A. Yes.

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1 Q. Huellett versus Syracuse, what were the
 2 circumstances in that case?
 3 A. That was a police officer. Again, it's a
 4 use of force on an individual that was handicapped on a
 5 bus that was tasered to gain control of him when he
 6 refused to get off the bus.
 7 Q. And you were retained as an expert in that
 8 case?
 9 A. Yes.
 10 Q. By whom?
 11 A. By the City of Syracuse.
 12 Q. And was a firearm used in that case?
 13 A. No.
 14 Q. I presume you don't consider a taser a
 15 firearm?
 16 A. No, I don't.
 17 Q. And what was your opinion in that case?
 18 A. That the officers acted reasonably based on
 19 the totality of the circumstances.
 20 Q. Now, just turning your attention back to
 21 the other four cases in your "Recent Deposition"

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1 category involving restrictions of the use of firearms
 2 and magazines -- and you said that you testified in
 3 each of those that -- against the restrictions in each
 4 particular state provision.
 5 Have you ever testified that a restriction
 6 on firearms in any way is reasonable and appropriate?
 7 A. I believe so if we're talking about
 8 fully-automatic firearms.
 9 Q. So in what circumstance did you testify as
 10 to that?
 11 A. It basically was a generality in my
 12 depositions at some point. I discussed that, for the
 13 common citizen, a fully-automatic firearm really isn't
 14 reasonable. That's more of a military weapon or a
 15 special police-type service-type of weapon.
 16 Q. And so can you explain why you draw that
 17 distinction.
 18 A. Based on my training and experience, a
 19 fully-automatic firearm is more difficult to control,
 20 more difficult to aim, greater chances of hitting an
 21 unintended target. It's also more likely to

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1 mis-function when needed.
 2 Q. And so what is your opinion in terms of
 3 what restrictions are appropriate on the use of
 4 fully-automatic weapons?
 5 A. Well, I personally don't believe that they
 6 should be used by citizens unless there is a specific
 7 reason; for example, a collector of firearms that may
 8 be interested in World War II type of weapons, you
 9 know, sporting type of events.
 10 For the most part, I don't see a
 11 fully-automatic weapon being something that the average
 12 citizen would want to have to protect themselves. I'm
 13 sure, when they're at the other end of a gun fight,
 14 they probably all wish they had one. But the reality
 15 is that they're very hard to control, and they're very
 16 hard to be accurate with.
 17 Q. So you think they should only be available
 18 to citizens for a collection or for sporting? What do
 19 you mean by -- is that right?
 20 A. Sporting. Yeah, what I mean by that is
 21 that there is definitely, I think, a historical basis

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1 that some of these weapons, just like our -- some of
 2 our old war planes and -- you know, that we still
 3 maintain just to be able to see what it looked like --
 4 I'll say World War II -- how they fired.
 5 Like, I'm sure there is a nostalgia about,
 6 for instance, you know, the gangs in Chicago -- they
 7 used a Tommy gun -- what a Tommy gun was actually like
 8 in comparison to our current machine guns. You know,
 9 you can look at it from a historical point of view, the
 10 rate of fire, what it was able to do.
 11 I mean, things like that the Tommy gun was
 12 extremely heavy. You know, you wouldn't have an
 13 appreciation until you had one of those things in your
 14 hand and realized it was about 25 pounds fully loaded
 15 in comparison to the weapons that are carried today.
 16 Q. So, for collectible purposes, you think
 17 it's a good thing that when -- strike that.
 18 So you think that fully-automatic weapons
 19 should still be able to be used by collectors?
 20 A. For legitimate collectors and historians,
 21 yes.

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| <p style="text-align: right;">Page 38</p> <p>1 Q. And you also mentioned for sporting
 2 purposes.
 3 What do you mean by that?
 4 A. Well, I know that certain states have
 5 different laws, right? And in Nevada, for instance, I
 6 believe you can have a fully-automatic weapon if you
 7 purchase the license for that. It's very expensive.
 8 They do have tournaments with some of these
 9 weapons, different types of weapons, you know; and so,
 10 in that case, it would be sporting. Whether it's to
 11 knock down bowling pins or punch holes in paper, there
 12 are sporting events.
 13 Q. And so is it your opinion that, outside of
 14 sporting events and collectibles, that fully-automatic
 15 weapons are appropriately restricted or should be
 16 appropriately restricted?
 17 A. Other than military and police, that's
 18 correct.
 19 Q. Are you familiar with the term "bump
 20 stock"?
 21 A. Yes.</p> | <p style="text-align: right;">Page 40</p> <p>1 wouldn't shoot another round in a semi-automatic.
 2 Q. But it continues to pull the trigger?
 3 A. Yeah. By that device, yes.
 4 Q. All right. Again, I mean by the device.
 5 A. Yes.
 6 Q. And so is the effect then of a bump stock
 7 to make a semi-automatic weapon similar in the way that
 8 it fires to a fully-automatic weapon?
 9 MR. JOHN SWEENEY: Objection.
 10 THE WITNESS: One more time with the
 11 question, please.
 12 MR. JAMES SWEENEY: Will you repeat that.
 13 (Record read.)
 14 THE WITNESS: No.
 15 BY MR. JAMES SWEENEY:
 16 Q. Why not?
 17 A. A bump stock, it's a gadget. It's not ---
 18 it's designed outside of the manufacturer's design for
 19 that weapon. It's kind of like putting a hot muffler
 20 on a car, you know. It's an accessory, but it does not
 21 actually make the weapon fully-automatic. It also is</p> |
| <p style="text-align: right;">Page 39</p> <p>1 Q. And what is a bump stock?
 2 A. It's a gadget. It's a device that cycles a
 3 trigger based upon the recoil of the rifle. Kind of
 4 reminds me of a sewing needle on a sewing machine. You
 5 press your foot on the pedal. And it is not
 6 necessarily fully-automatic, but it is a simulation at
 7 a low level of what a fully-automatic rifle could be.
 8 Q. When you say "simulation at a low level,"
 9 what do you mean by that?
 10 A. Well, a fully-automatic weapon is you pull
 11 the trigger and the weapon continues to fire until it
 12 either runs out of ammunition or you take your finger
 13 off the trigger.
 14 In the instance of a bump stock,
 15 technically the trigger is pulled each time. It's just
 16 that the relationship of the speed that that occurs is
 17 faster than most people could pull the trigger
 18 manually.
 19 Q. Because it continually shoots then?
 20 A. It pulls the trigger, but it doesn't hold
 21 the trigger down. If you held the trigger down, it</p> | <p style="text-align: right;">Page 41</p> <p>1 very hard to control and site, so I don't think that
 2 they are one in the same.
 3 Q. Could be the ammunition fires much more
 4 rapidly with a bump stock than it does from a -- strike
 5 that.
 6 The ammunition, the bullets, fire much more
 7 rapidly from a semi-automatic weapon with a bump stock
 8 than without a bump stock; is that fair to say?
 9 A. Generally, that would be true; however,
 10 there are some individuals that could fire a weapon
 11 without the bump stock just as quick, especially those
 12 in the military and police.
 13 Q. But, generally, that's true for -- and that
 14 would be generally true for civilians?
 15 A. Yes.
 16 Q. And one of the features of a
 17 fully-automatic weapon is that it fires its rounds
 18 rapidly in rapid succession?
 19 A. Yes.
 20 Q. Other than the testimony that you say
 21 you've had throughout some of the depositions you've</p> |

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1 appropriate to use certain levels of force?
 2 A. Oh, yes.
 3 Q. Let's take a look at your employment
 4 history --
 5 A. Okay.
 6 Q. -- and starting from the earlier times and
 7 going forward.
 8 A. Okay.
 9 Q. We're not going to be looking for every
 10 last little bit since it's been a long career, but you
 11 had several positions in the early -- in the first 10
 12 or more years -- 10 to 15 years with police
 13 departments. And that would be with Monroe County,
 14 Village of Fairport -- I'm not going to say it right.
 15 Irondequoit?
 16 A. Irondequoit.
 17 Q. Irondequoit. Not so bad -- City of
 18 Rochester.
 19 What type of training did you receive as
 20 part of those positions on the -- in terms of weapons?
 21 What types of weapons were you trained to use?

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1 A. I was trained to use handguns, shotguns.
 2 I was trained in a rifle. I was trained in less lethal
 3 weapons and chemical agents.
 4 Q. So you were not trained in those -- so
 5 those are all -- so those are -- strike that.
 6 You weren't trained on any weapons other
 7 than the ones you just mentioned?
 8 A. Yes.
 9 Q. Okay. So you weren't trained how to use an
 10 AK-57 or any of those types of weapons?
 11 A. No. I fired some of those in training, but
 12 I wasn't trained specifically in those weapons.
 13 Q. The police departments didn't provide you
 14 training on use of those weapons?
 15 A. That's correct.
 16 Q. And you didn't generally have those weapons
 17 available to you to use in that police department?
 18 A. No. They're more of a type of just -- I
 19 forgot the word. It skips me. But it was just
 20 something to be able to fire, let's say, a grease gun
 21 from World War II or to be able to fire an AK or an FN

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1 just to be able to show and become familiar with the
 2 type of weapons that you might deal with on the street
 3 if it was confiscated from, say, a civilian or found.
 4 Q. Okay. But in those communities, you
 5 weren't trained to use them in your daily police work?
 6 A. Oh, no, no.
 7 Q. Is that because there wasn't a need to use
 8 those kinds of weapons in the police work in those
 9 particular towns?
 10 A. Well, there wasn't a need for the
 11 assignment that I was in to have an automatic or a
 12 select fire weapon because I was not a SWAT member. So
 13 there wasn't a need for me. So if I was assigned to a
 14 school to go to learn how to use one of those weapons,
 15 I would probably be part of a SWAT team or a
 16 specialized unit.
 17 Q. So the SWAT unit or specialized unit would
 18 be trained in those more assault type weapons, as
 19 they're called.
 20 A. They would be trained in weapons that would
 21 be semi-automatic or controlled burst type of weapons.

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1 Q. Okay. But, since you were not a member of
 2 those units, you weren't trained in those?
 3 A. I was not trained in those weapons.
 4 Q. And is that -- so is it fair to say, for
 5 those types of weapons, the semi-automatic and the
 6 burst weapons, that those are weapons that require more
 7 training in order to be able to use them effectively or
 8 well?
 9 MR. JOHN SWEENEY: Objection.
 10 THE WITNESS: The weapons that are multiple
 11 burst type weapons do take more training, in my
 12 experience, to be able to control.
 13 BY MR. JAMES SWEENEY:
 14 Q. And, in your day-to-day police work in
 15 those communities, you didn't have the -- you didn't
 16 have the need to use those weapons?
 17 A. There were days when I wish I had them,
 18 but, no, I didn't. No.
 19 Q. And different communities have different
 20 law enforcement needs; is that fair to say?
 21 A. That's correct.

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| <p style="text-align: right;">Page 82</p> <p>1 Q. So Exhibit 2 is your report as an expert in
 2 this case.
 3 Can you identify what you consider your
 4 areas of expertise to be in this case.
 5 A. My area of expertise involves justifiable
 6 use of force training specifically in response to
 7 threat awareness levels, firearms as far as the use of,
 8 not as far as the armature type of areas. I'm not a
 9 gunsmith by any means or anything like that.
 10 My area is use of less than lethal force
 11 and deadly physical force if needed, policies of police
 12 departments, training of police departments, and
 13 training in simulational environments with weapons
 14 designed to use for instructional purposes that are
 15 similar to real world weapons.
 16 Q. Okay. You're not a lawyer?
 17 A. I am not a lawyer.
 18 MR. JOHN SWEENEY: Would this be a good
 19 time to take a break?
 20 MR. JAMES SWEENEY: Yes.
 21 (A brief recess was taken.)</p> | <p style="text-align: right;">Page 84</p> <p>1 rounds or less that fit any firearm?
 2 A. It is possible; however, some of those
 3 magazines may not function correctly because, when the
 4 weapons are designed by the manufacturer, the magazines
 5 are a vital component to its ability to function.
 6 Q. And so there are magazines of ten rounds or
 7 less, and they may or may not function properly in the
 8 particular --
 9 A. They're after market, yes.
 10 Q. And these magazines of ten or less, are
 11 they available for sale to the general public?
 12 A. I believe so, yes.
 13 Q. And those would be for handguns?
 14 A. Handguns and rifles.
 15 Q. And rifles. ARs?
 16 A. Yes.
 17 Q. Now, do you have any information based on
 18 studies or reports on the number of rounds an
 19 average -- citizens in average have fired when using a
 20 weapon in self-defense in their home?
 21 A. No, I do not.</p> |
| <p style="text-align: right;">Page 83</p> <p>1 BY MR. JAMES SWEENEY:
 2 Q. Back on the record. Turning your attention
 3 back to Exhibit 2, your report.
 4 A. Okay.
 5 Q. Just going to direct your attention to
 6 particular parts of the report and ask you some
 7 questions about them.
 8 So if you can take a look at Page 3,
 9 subsection Roman numeral II, you state in the second
 10 paragraph, second sentence:
 11 "On a nationwide basis, most pistols are
 12 manufactured with magazines holding 10 to 17 rounds."
 13 The magazines, to the best your knowledge,
 14 aren't actually manufactured into the gun or the
 15 firearm; is that right?
 16 MR. JOHN SWEENEY: Objection.
 17 THE WITNESS: Generally, the magazines I'm
 18 talking about are external magazines that are loaded
 19 into the weapon.
 20 BY MR. JAMES SWEENEY:
 21 Q. Is it possible to get magazines of ten</p> | <p style="text-align: right;">Page 85</p> <p>1 Q. Now, you answered in the series of previous
 2 questions that, when a civilian or a homeowner has a
 3 weapon, that's generally used in self-defense; is that
 4 right?
 5 MR. JOHN SWEENEY: Objection.
 6 THE WITNESS: Used in self-defense or
 7 recreational use.
 8 BY MR. JAMES SWEENEY:
 9 Q. Or recreational use. That's right.
 10 But that's different than a police officer
 11 who in addition to trying to defend themselves also
 12 have the goal of trying to apprehend an assailant,
 13 suspect, or criminal, correct?
 14 A. I can't agree with that statement.
 15 Q. And why not?
 16 A. Because it's making the assumption that a
 17 civilian may not use deadly force and hold an
 18 individual at bay after they use deadly force for the
 19 police or even pursue an individual on their own
 20 property to stop the commission of a crime. So, I
 21 mean, that's an assumption that I can't make.</p> |

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| <p style="text-align: right;">Page 94</p> <p>1 capability of controlling to the point where it would
 2 injure others that are not involved, that would be
 3 correct.
 4 Q. So by your reference to "short of weapons
 5 that they have trouble controlling," do you mean in
 6 terms of their training?
 7 A. Training, type of weapon, you know,
 8 explosive versus a bullet. You know, somebody may be
 9 not well-trained in the use of a shotgun having a
 10 shotgun with double odd buck in it, you know; and not
 11 realizing that there is several pellets, they're going
 12 in opposite directions. You know, if you don't know
 13 how to use it, you shouldn't be having it.
 14 Q. Okay. Turn back, though, just to law
 15 enforcement officers. And you said that they would
 16 want to make sure they have sufficient weapons for the
 17 situation.
 18 But wouldn't they prefer to have the
 19 assailant, the suspect, whoever they're trying to
 20 apprehend, have the least -- less deadly force rather
 21 than more deadly force?</p> | <p style="text-align: right;">Page 96</p> <p>1 A law enforcement officer or any individual
 2 would prefer to have less rounds shot at them rather
 3 than more rounds; is that fair to say?
 4 A. No rounds would be best.
 5 Q. No rounds would be best.
 6 Fewer rounds would be better?
 7 A. Right.
 8 Q. More rounds would be worse --
 9 A. Correct.
 10 Q. -- is that fair?
 11 A. Yes.
 12 Q. All right. Turn back to your report,
 13 Exhibit 2, Section 2, Page 3, first sentence of that
 14 first paragraph in Section 2.
 15 A. Okay.
 16 Q. You state that:
 17 "The Massachusetts law bans standard
 18 magazines that are in common use..."
 19 Do you have any -- what do you base your
 20 statement that those are in common use on?
 21 A. Basically, it's what is being used by the</p> |
| <p style="text-align: right;">Page 95</p> <p>1 A. I think that would be applicable to any
 2 situation where an individual is facing a threat, not
 3 just law enforcement.
 4 Q. Okay. Anyone, though?
 5 A. Yes.
 6 Q. And a smaller magazine capacity has less
 7 deadly force than a larger magazine capacity?
 8 MR. JOHN SWEENEY: Objection.
 9 THE WITNESS: I don't agree with that
 10 comment at all.
 11 BY MR. JAMES SWEENEY:
 12 Q. And why is that?
 13 A. One bullet could be just as deadly as ten.
 14 Q. True.
 15 But more bullets have a better chance of
 16 hitting someone; isn't that right?
 17 A. I could not generalize that statement.
 18 Q. If there's more bullets -- well, strike
 19 that.
 20 If there's more rounds being shot, then --
 21 strike that.</p> | <p style="text-align: right;">Page 97</p> <p>1 majority of individuals around the country and which
 2 can be purchased or that have been inherited in time
 3 from one generation to another.
 4 Q. Do you have any -- do you know of any
 5 studies based on data on how common the use of those
 6 magazines are?
 7 A. My only study is my own personal
 8 experience.
 9 Q. And how about the reference in the next
 10 paragraph to -- about halfway down in the second
 11 paragraph:
 12 "These pistols, rifles, and shotguns are
 13 sold to civilians and are in common use for
 14 self-defense, hunting, and nationally-established
 15 sporting competitions."
 16 Is that an -- are there any studies or
 17 reports that you based that statement that "they are in
 18 common use" on?
 19 A. Just watching what people bring to the
 20 range and what people buy at gun shops, what people
 21 show up to training with. So that's how I base my</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 perception and opinion on that part.</p> <p>2 Q. So it's based on your personal experience?</p> <p>3 A. Based on my personal experience, yes.</p> <p>4 Q. Just below that, Section Roman numeral III,</p> <p>5 first sentence, references the Massachusetts law using</p> <p>6 the term "assault weapon" to criminalize commonly used</p> <p>7 firearms.</p> <p>8 Same response in terms of how you</p> <p>9 determined the basis of your statement that these are</p> <p>10 commonly used firearms?</p> <p>11 A. Yes.</p> <p>12 Q. Based on your experience, your personal</p> <p>13 observations and experience, not on any studies or</p> <p>14 reports?</p> <p>15 A. Yes.</p> <p>16 Q. Over on the next page, Page 4, still in</p> <p>17 Roman numeral III, first full paragraph says that:</p> <p>18 "Restricting pistols, rifles, and shotguns</p> <p>19 arbitrarily placed on an enumerated list..."</p> <p>20 What's the basis -- all right. Well, what</p> <p>21 do you know about how the list of weapons was</p> | <p style="text-align: right;">Page 100</p> <p>1 Q. You haven't looked into --</p> <p>2 A. Other than -- and most of those weapons</p> <p>3 are -- had a foundation as a military or a law</p> <p>4 enforcement type weapon to begin with.</p> <p>5 Q. So other than that, you haven't done any</p> <p>6 research into how those weapons were put into those</p> <p>7 lists?</p> <p>8 A. No.</p> <p>9 Q. Second part of that same sentence, you say</p> <p>10 that placing these or restricting these on the above</p> <p>11 features is -- strike that.</p> <p>12 In that same sentence you say:</p> <p>13 "Restricting pistols, rifles, and shotguns</p> <p>14 arbitrarily placed on an enumerated list or on the</p> <p>15 basis of the above features is not rationally related</p> <p>16 to the safety and goals that the Attorney General</p> <p>17 purports to achieve."</p> <p>18 What's the basis for the statement that</p> <p>19 it's not rationally related?</p> <p>20 A. Well, some of the restrictions are based on</p> <p>21 cosmetic issues that really have nothing to do with the</p> |
| <p style="text-align: right;">Page 99</p> <p>1 developed?</p> <p>2 A. I believe they took it from federal law,</p> <p>3 and that's the basis of it.</p> <p>4 Q. So what's the basis of your statement that</p> <p>5 they were arbitrarily placed on the list?</p> <p>6 A. They took common weapons that are -- that</p> <p>7 function that appear like military weapons and kind of</p> <p>8 group them all as part of the same threat -- part of</p> <p>9 the same danger to society as a result of their</p> <p>10 functioning.</p> <p>11 Q. Did you review any of the reasons as to how</p> <p>12 that list was developed in the legislative history in</p> <p>13 the testimony from the hearings about how that list was</p> <p>14 developed and why certain guns were placed on there --</p> <p>15 certain firearms were and other ones may not have been?</p> <p>16 A. My perception is that many of these laws</p> <p>17 and lists are developed by one state copying another</p> <p>18 state's laws to the point where they're almost</p> <p>19 identical with the exception of one or two small</p> <p>20 things. I don't have any knowledge of the research as</p> <p>21 to why they are on that list.</p> | <p style="text-align: right;">Page 101</p> <p>1 lethality of the firearm. You know, I'll give you an</p> <p>2 example. A barrel shroud, almost every rifle or</p> <p>3 shotgun made has some sort of stock-type device</p> <p>4 underneath the barrel so you don't burn your hand on</p> <p>5 it.</p> <p>6 But because it may be metal and have holes</p> <p>7 in it to air that barrel, it is now considered more</p> <p>8 deadly than that rifle or shotgun that has a wooden</p> <p>9 stock because of the way it looks or because of the</p> <p>10 color that it's painted. So those are some of the</p> <p>11 things that I look at when I make that statement.</p> <p>12 Q. Okay. Other than that example, what other</p> <p>13 aspects do you consider are not rationally related to</p> <p>14 the safety and goals?</p> <p>15 A. Well, I would think that if a municipality</p> <p>16 or a government wanted their civilians to be -- feel</p> <p>17 safe in their homes and society, that they would want</p> <p>18 them to be following the law, be somewhat trained in</p> <p>19 that device, feel comfortable using that device or tool</p> <p>20 to the best of their ability.</p> <p>21 So if they allowed them to have that weapon</p> |

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1 A. Right.
 2 Q. Okay. So your statement that it was a
 3 common occurrence -- 30 to 40 percent occurrence
 4 rate -- is that based on your experience in training
 5 police officers?
 6 A. Not just my experience. I trained firearms
 7 instructors at our academy, advanced firearms
 8 instructors school at our academy.
 9 And I can tell you that every instructor
 10 that I've ever talked to has agreed that that is a
 11 common event and almost every day that they do training
 12 and simulations somebody is getting a shot in the hand.
 13 Q. Is the 30 to 40 percent your estimate?
 14 A. That is my estimate, yes.
 15 Q. Is that based on any studies of actual
 16 attacks in terms of how often police officers engaged
 17 in a gun fight are struck in the hand by an attacker?
 18 A. It's not based on any specific study but on
 19 my experience.
 20 Q. And do you know, from your experience as a
 21 police officer, how many instances did a homeowner get

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1 struck in the hand by an assailant, someone intruding
 2 into the home?
 3 A. I don't know of anyone.
 4 Q. Are you aware of any published studies in
 5 which how often a homeowner is struck in the hand by a
 6 home intruder or assailant?
 7 A. No.
 8 Q. In your personal experience as a police
 9 officer, are you aware of any instances in which a
 10 civilian had to fire more than ten rounds because of an
 11 assailant in a home?
 12 A. That's really hard for me to answer. I
 13 don't recall any, but it's not that it couldn't have
 14 happened in my time on the job. I didn't keep track of
 15 some of those things.
 16 Q. But you don't recall any?
 17 A. I don't recall any, no.
 18 Q. Are you generally aware of instances in
 19 which a homeowner had to fire more that ten rounds
 20 against a home intruder or an assailant?
 21 A. I make that statement -- or, it's mentioned

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1 because I'm transferring what I've learned in law
 2 enforcement as far as the ability to hit a target under
 3 stress to the civilian world.
 4 And how I make that assessment is that, if
 5 you have an individual that's a police officer that's
 6 supposedly better trained than your average civilian
 7 that goes to the gun range once or twice a year, right,
 8 that is only hitting their target in a close range
 9 encounter maybe 20 or 30 percent of the time if they're
 10 lucky, all right...
 11 If they're having that difficulty under
 12 stress, I think it's safe to assume -- and, again, when
 13 you make an assumption, you know what it does -- but
 14 the bottom line is it does transfer over, I think, to
 15 the civilian world as well; that they're not going to
 16 be even as capable as an officer who's had more
 17 training.
 18 Q. So the homeowner situations where there is
 19 an intruder, it's generally closer encounters as you
 20 indicate in your answer -- closer range encounters?
 21 A. That's not necessarily true. Law

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1 enforcement encounters, shooting encounters, are --
 2 actually, seem to be closer to me in my perception than
 3 those where a citizen encounters an individual with a
 4 gun.
 5 Q. In their home?
 6 A. In or around their home. Once they're
 7 outside their house, yes.
 8 Q. So are you aware of any circumstances in
 9 which a homeowner had to fire more than ten rounds to
 10 deal with an intruder?
 11 A. Not that I'm aware of off the top of my
 12 head.
 13 Q. Turn your attention to Page 7 of your
 14 report. The second full paragraph, you reference a
 15 2015 report in which you say there were 33 instances of
 16 police discharging firearms.
 17 And this is in regard to the New York City
 18 Police Department?
 19 A. Yes.
 20 Q. And, in 17 percent of those, more than ten
 21 rounds were fired?

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|---|---|
| <p style="text-align: right;">Page 114</p> <p>1 A. Uh-huh.</p> <p>2 Q. And that's a report involving the New York</p> <p>3 City Police Department, correct?</p> <p>4 A. New York City Police Department, yes.</p> <p>5 Q. And those all involved on-duty incidents;</p> <p>6 is that right?</p> <p>7 A. I believe that they -- when you say</p> <p>8 "on-duty," police departments consider, when an officer</p> <p>9 is involved in an incident where they've fired their</p> <p>10 weapon, generally, that the moment that they engaged</p> <p>11 that they're on duty for the most part. It may not be</p> <p>12 uniform. It may be in plainclothes as well, so it's</p> <p>13 hard to say specifically.</p> <p>14 Q. But they would involve on-duty to the</p> <p>15 extent of that rather than incidents in the officer's</p> <p>16 home?</p> <p>17 A. Yes.</p> <p>18 Q. Is that fair?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you know if any of those involved the</p> <p>21 pursuit of assailants?</p> | <p style="text-align: right;">Page 116</p> <p>1 involved an assault by a suspect against the police</p> <p>2 officer?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. How many involved that?</p> <p>5 A. There were close-range encounters --</p> <p>6 subdued and aggressive behavior. Eventually, every</p> <p>7 police officer has to approach an individual that</p> <p>8 they're trying to control, so there is a component</p> <p>9 where they have to close the distance in order to take</p> <p>10 the person into custody.</p> <p>11 Q. So can you tell me about any -- for any of</p> <p>12 these instances, what the circumstances were in which</p> <p>13 the suspect or assailant attempted to assault the</p> <p>14 police officer? Do you know the specifics?</p> <p>15 A. I don't know the specifics without reading</p> <p>16 it again.</p> <p>17 Q. Okay. So we know that generally, once they</p> <p>18 close in on the suspect, then they're going to be in</p> <p>19 closer range?</p> <p>20 A. You're going to be in closer range, but</p> <p>21 that doesn't necessarily mean they're going to hit</p> |
| <p style="text-align: right;">Page 115</p> <p>1 A. They did. They did.</p> <p>2 Q. The ones in which more than ten rounds were</p> <p>3 fired?</p> <p>4 A. They did.</p> <p>5 Q. Okay.</p> <p>6 A. Some of them did involve pursuit, yes.</p> <p>7 Q. Okay. Do you know how many?</p> <p>8 A. No.</p> <p>9 Q. And the pursuit we're talking about is the</p> <p>10 pursuit of assailants or suspects or --</p> <p>11 A. Yeah, somebody running away or shooting --</p> <p>12 a gunfight back and forth.</p> <p>13 Q. Do you know whether any of those officers</p> <p>14 were disciplined in any way for discharging more rounds</p> <p>15 than were necessary under the circumstances?</p> <p>16 A. No.</p> <p>17 Q. Do you know whether any of those incidents</p> <p>18 involved more than one suspect or assailant?</p> <p>19 A. I don't recall. I haven't read it in a</p> <p>20 while.</p> <p>21 Q. Do you know whether any of those incidents</p> | <p style="text-align: right;">Page 117</p> <p>1 their target.</p> <p>2 Q. It doesn't necessarily mean that the</p> <p>3 suspect assaulted a police officer?</p> <p>4 A. We don't know. I don't know. I can't say</p> <p>5 "yes" or "no" to that.</p> <p>6 Q. Okay. In the next section of your</p> <p>7 report --</p> <p>8 MR. JOHN SWEENEY: Would this be a good</p> <p>9 time to take a break?</p> <p>10 MR. JAMES SWEENEY: Sure.</p> <p>11 (A brief recess was taken.)</p> <p>12 BY MR. JAMES SWEENEY:</p> <p>13 Q. Back on the record. Turn your attention to</p> <p>14 the next page of your report, which is "The Effective</p> <p>15 of Time Delay Caused By Loading."</p> <p>16 Are you aware of any particular instances</p> <p>17 with a lack of the use of a reloading hand caused a</p> <p>18 problem for a homeowner defending against an intruder?</p> <p>19 A. Where a -- why don't you clarify that?</p> <p>20 Q. Sure. Your section here -- this section of</p> <p>21 the report talks about the effect of the loss of use of</p> |

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1 I mean, in the military, you have more need to actually
 2 shoot through cover at an adversary that may be hiding
 3 behind cover than...
 4 Q. What kind of cover do you have in mind?
 5 A. Well, I mean, you're talking about an
 6 average two by four, you know. And if you've got a
 7 drywall and somebody is standing behind drywall,
 8 obviously, the .223 will go through drywall.
 9 But if it hits that stud, that two by four
 10 stud, it may or may not go through depending on the
 11 pressure of the round that's coming out. The military
 12 round is a little hot.
 13 Q. So it's more likely to go through the two
 14 by four?
 15 A. Yeah, more likely to go through the two by
 16 four. Also, they have an ability to be able to make it
 17 armor piercing as well as a result of that, so it's
 18 designed slightly differently. And the primers of
 19 those rounds are harder as well for heavy duty use.
 20 Let's see.
 21 Q. Any other differences between the AR-15 and

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1 the M-16 and M-4?
 2 A. Well, I mean, the barrels can be longer or
 3 shorter depending on the circumstances. There are
 4 AR-15s that are designed to be rifles for hunting that
 5 have longer barrels, heavier duty barrels.
 6 The AR-15 for the most part has been a .223
 7 round; but, however, recently, that has changed to
 8 several calibers. So the actual model, the type of
 9 weapon itself, is now manufactured in anything from a
 10 9 millimeter to .22s. The sighting systems can be
 11 different.
 12 Q. In what way?
 13 A. In that they're more easily customizable
 14 military weapons.
 15 Q. More easily customizable in which ones?
 16 A. Sighting platforms. You could have night
 17 sights on it. You could have lasers on it. You could
 18 have optical devices that would see in the dark.
 19 Q. Is that on the M-16 and M-4?
 20 A. M-16, yes. Let's see what else.
 21 Q. Any other differences?

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1 A. I mean, the biggest difference as I stated
 2 in the report is that M-16 and M-4 are designed
 3 specifically to be able to perform what's called
 4 "suppressive fire."
 5 Q. What do you mean by "suppressive fire"?
 6 A. Basically, it's a situation in combat where
 7 you hope that your person that's your opponent or your
 8 assailant at one point puts their head down behind
 9 cover and you are able to keep their head down behind
 10 cover to the point where you can either move to a safer
 11 position or you can violate their cover and get around
 12 it while they're holding their head down and be able
 13 to, you know, use force to control them -- kill them if
 14 that's the case.
 15 Q. And fully-automatic fire usually does that?
 16 A. Oh, definitely.
 17 Q. Any other differences that you haven't
 18 mentioned?
 19 A. I know the bolt carrier is slightly
 20 different. That's about it off the top of my head.
 21 Q. Okay. Over on Page 10 of your report, last

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1 paragraph of Section Roman numeral VI. Just before the
 2 beginning of Roman numeral VII, you state that certain
 3 firearms are widely sought after by civilians for
 4 hunting, sporting competitions, and self-defense.
 5 What do you base that statement on that
 6 they are widely sought after by civilians for these
 7 purposes?
 8 A. I think it is exactly what it says there.
 9 I mean, civilians use these weapons for hunting. They
 10 compete with these weapons, and they have those weapons
 11 for defense in their homes.
 12 And, as a result, most civilians want to
 13 purchase a weapon that is not only functional, but
 14 something that is going to work every time. And the
 15 best proving ground for that has traditionally been the
 16 military from the days we started making weapons.
 17 Q. So do you have any studies or reports on
 18 how many people seek these weapons?
 19 A. I can only tell you based on my experience
 20 that civilians gravitate towards what police and the
 21 military tend to believe are reliable.

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1 Q. -- it's certainly a bigger gun than a
 2 handgun?
 3 A. Right.
 4 Q. Next paragraph, in terms of accuracy, are
 5 handguns less accurate at short range?
 6 A. Handguns are less accurate period than a --
 7 you're asking me than a rifle, I'm assuming, right?
 8 Q. Yeah.
 9 A. Yes. In general, yes, they're less
 10 accurate than a rifle.
 11 Q. Even at short range?
 12 A. Even at short range because of the fact
 13 that the barrel being longer, it's more precise, you
 14 know. I mean, if you're talking about accuracy, the
 15 rifle is more accurate regardless.
 16 If you're talking about distance as far as
 17 the ability to retain the weapon, it may be a different
 18 issue, so...
 19 Q. And what do you mean by that?
 20 A. What I'm talking about -- you're talking
 21 about accuracy here. So accuracy is the ability to be

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1 able to place that object within a certain tolerance
 2 spot, let's say, okay? And, regardless, the handgun,
 3 having a shorter barrel, is less accurate consistently
 4 than a rifle.
 5 Q. And does it make a difference, though, at
 6 all over what range?
 7 A. Oh, it certainly makes a difference over
 8 range. To say that I haven't seen anybody that could
 9 shoot a handgun as well as a rifle would be a lie.
 10 There is some crack shots that I've seen be able to do
 11 things at a hundred yards with a handgun.
 12 But you really wouldn't want to be shooting
 13 a hundred yards with a handgun because it's really
 14 futile for most people.
 15 Q. All right. But in a shorter distance, a
 16 handgun is going to be much more accurate?
 17 A. Not more accurate. More convenient and
 18 more ergonomically easy to be in that environment with.
 19 Accuracy is totally different.
 20 Q. But there are some benefits to a handgun at
 21 shorter distances?

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1 A. Certainly, there are some benefits to a
 2 handgun.
 3 Q. Okay. And what are those?
 4 A. Conceal ability, the ability to be able to
 5 pull it out and be able to use it sometimes more
 6 quickly depending on if it's underneath clothing. I
 7 mean, those are just some of the things.
 8 Q. You also state here that:
 9 "Most crimes are committed with handguns."
 10 Do you have any reports or studies that you
 11 base that on? How often -- do you have any reports or
 12 studies of data that show how often the banned weapons
 13 are used in crimes of the home?
 14 A. I could only -- no, no studies. Just based
 15 on my experience.
 16 Q. Okay. And, as you said before, you're
 17 not -- you don't -- you're not a lawyer? You're not an
 18 expert in statutory interpretation?
 19 A. No.
 20 Q. All right. Let's turn to Page 14. Roman
 21 numeral XX, "THE RIGHT AND ABILITY TO DEFEND ONE SELF,"

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1 that section. The last paragraph of that section you
 2 state:
 3 "Civilians need an advantage over the
 4 criminals against whom they must defend themselves,
 5 especially in the home, and should not be required or
 6 expected to defend themselves against dangerous
 7 criminals without superior, or at the very least
 8 comparable, firearms."
 9 Since criminals can theoretically get any
 10 type of weapon, does that mean you think that citizens
 11 should also be able to be entitled to have any type of
 12 weapon?
 13 A. When you say "any type of weapon," I have
 14 never known of a criminal walking in with a machine gun
 15 into somebody's home.
 16 Q. So apart from machine guns then?
 17 A. Apart from machine guns, I would say they
 18 should at least be on equal foundation than the
 19 criminal.
 20 Q. So it's your view that, if criminals can
 21 get the banned weapons, then citizens shouldn't be

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary will be made on the Errata Sheet.

GUY ROSSI

Date

(If needed, make additional copies of the Errata Sheet on the next page or use a blank piece of paper.)

ERRATA SHEET

Case: Worman, et al. vs. Baker, et al.

Witness: GUY ROSSI

Date: 11/06/2017

| PAGE/LINE | SHOULD READ | REASON FOR CHANGE |
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District of Columbia, to wit:

I, Melinda Johnson, CSR, a Notary Public of the District of Columbia, do hereby certify that the within-named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand this 17th day of November, 2017.



Melinda Johnson, CSR

Notary Public

My Commission Expires:

February 14, 2022